SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 717

LOUISVILLE JOINT STOCK LAND BANK,
PETITIONER,

vs.

WILLIAM W. RADFORD, SR.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 11, 1935.

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IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE WESTERN DISTRICT OF KENTUCKY.
PADUCAH DIVISION.

In Bankruptcy.

In Re

William W. Radford, Senior,

Petitioner.

Be it remembered that heretofore on the 25th day of July, 1933, there was filed in the office of the Clerk of the above named Court, a petition in words and figures as follows:

PETITION OF FARMERS FOR THE APPOINTMENT OF CONCILIATION COMMISSIONER.

To the Honorable Charles I, Dawson,

Judge of the District Court of the United States for the Western District of Kentucky:

The petition of R. E. Dowlen, W. P. Davie, E. C. Radford, W. W. Radford, C. H. Summerhill, J. L. Rives, B. P. Eubank, R. H. Rives, Roy M. Milan, R. E. Jagoe, G. H. Warfield, F. W. Hampton, Theodore R. Troendle, Cherry Bros., Mrs. & H. Giles, W. A. McKinzie, respectfully represents:

That each of your petitioners is personally bona fide engaged in farming operations or derives the principal part of his income from farming operations, as more fully set forth with respect to each petitioner in the schedules hereto annexed and made a part hereof marked exhibits ..... respectively;

That the farming operation of each of your petitioners occur in the county of Christian, in said district; that each of your petitioners is insolvent or unable to meet his debts as they mature, and that each intends, if a conciliation commissioner for said county is appointed, to file a petition for relief under section 75 of the Bankruptcy Act.

Wherefore your petitioners pray that a conciliation commissioner for said county be appointed as provided in said section.

Name	Address
R. E. Dowlen,	Hopkinsville, Ky.
W. P. Davie,	Herndon, Ky.
W. W. Radford,	Howell, Ky.
C. H. Summerhill,	Oak Grove, Ky.
J. L. Rives,	Pembroke, Ky., R. F. D. 2.
B. P. Eubank,	Hopkinsville, Ky., R. #1.
R. H. Rives,	Hopkinsville, Ky., R. #1.
Roy M. Milan,	Oak Grove, Ky., R. F. D. 2.
R. E. Jagoe,	Oak Grove, Ky.
G. H. Warfield,	Hopkinsville, Ky.
F. W. Hampton,	Pembroke, Ky.
Mrs. Sallie J. Mimms,	Pembroke, Ky.
W. A. McKinzie,	Oak Grove, Ky.
Theodore R. Troendle,	Pembroke, Ky.
Cherry Bros.,	Hopkinsville, Ky., R. #1.
Mrs. Lula Giles & Howard Giles,	Herndon, Ky.
E. C. Radford,	Hopkinsville, Ky.

(Form of verification to be signed by each petitioner:)

United States of America,
District of ....., ss:

I (or we), ..., who executed the foregoing petition, do hereby make solemn oath that the statements contained therein are true to the best of my (or our) knowledge, information, and belief.

(Signatures:)

Subscribed and sworn to before me this 22 day of July, A. D. 1933.

Fred Boulter,
Notary Public.

(Seal) (Official character)

And thereupon the above named Court did enter an order in words and figures as follows:

ORDER—Entered July 25, 1933.

This day came R. E. Dowlen, W. P. Davie, W. W. Radford, E. C. Radford, C. H. Summerhill, J. L. Rives, B. P. Eubank, R. H. Rives, Roy M. Milan, R. E. Jagoe, G. H. Warfield, F. W. Hampton, Theodore R. Troendle, Mrs. Lula Giles and Howard Giles, Cherry Brothers and W. A. McKinzie and tendered their petition, stating that they are each residents of Christian County, Kentucky, farmers and insolvent, and desire to avail themselves of the provisions of Section 75 of the Bankruptcy Act, as amended by the Act of March 3, 1933, and asking that a conciliation commissioner be appointed under Section 75 of said Act, which petition is ordered filed; and the court being advised,—

It Is Ordered that Alvin H. Clark be and he is hereby appointed Conciliation Commissioner for said County of Christian, State of Kentucky. He shall execute bond in the sum of Five Thousand Dollars ($5,000.00), with surety to be approved by the court, and shall faithfully discharge the duties of his office and take the oath prescribed by Section 16, Title 5 U. S. C.

Chas. I. Dawson,
Judge.

ORDER—Entered August 15, 1933.

By an order duly entered on July 25th, 1933, Alvin H. Clark was appointed conciliation commissioner for Christian County, Kentucky, on petition of R. E. Dowlen and sixteen other farmers, in accordance with provisions of the amendment to the Bankruptcy Act of March 3rd, 1933, but the said Alvin H. Clark having declined said appointment—

It is now Ordered that J. Charles Fleming of Hopkinsville, Kentucky, be and he is hereby appointed conciliation commissioner for said County of Christian, State

Order

of Kentucky. He shall execute bond in the sum of Five Thousand Dollars, ($5,000.00), with surety to be approved by the Court, conditioned that he shall faithfully discharge the duties of this office and before entering upon the discharge thereof, he will also take the oath prescribed by Section 16, Title 5, U. S. C.

Chas. I. Dawson,
Judge.

I, J. Charles Fleming, do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

J. Chas. Fleming.

Subscribed and sworn to before me this 19th day of August, 1933. Commission expires January 5, 1935.

Kate T. Boyd,
Notary Public, Christian Co. Ky.

(Seal)

In the Matter of
J. Chas. Fleming,
Conciliation Commissioner.

J. Chas. Fleming having been appointed Conciliation Commissioner of Christian County, Kentucky, and required to give bond for the faithful discharge of his duties in the sum of Five Thousand Dollars ($5,000.00), now comes said J. Chas. Fleming, with The Aetna Casualty & Surety Co. as his surety, and tenders a bond in the aforesaid sum, conditioned according to law, which bond is examined and approved by the Court, so endorsed by the Judge and ordered to be filed in the Clerk's office as a part of the record in this matter.

Chas. I. Dawson, Judge.

August 30th, 1933.

ORDER REDUCING BOND OF J. CHAS. FLEMING—
Entered June 28, 1934.

It Is Ordered by the Court that the order fixing the bond of J. Chas. Fleming, Conciliation Commissioner, at $5,000.00, be and it is hereby modified so that said conciliation commissioner may execute such bond, conditioned according to law, in the sum of $1,500.00.

Chas. I. Dawson, Judge.

June 28th, 1934.

BOND.

THE AETNA CASUALTY AND SURETY COMPANY.

(Emblem)

Hartford, Connecticut.
Morgan B. Brainard,
President.

Know All Men By These Presents: That we, J. Charles Fleming of Hopkinsville, Christian County, Kentucky, as principal, and The Aetna Casualty and Surety Company, of Hartford, Connecticut, as surety are held and firmly bound unto the United States of America, in the sum of Five Thousand and No/100 ($5,000.00) Dollars, lawful money of the United States, to be paid to the said United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Signed, sealed and dated this 24 day of August, 1933.

The condition of this obligation is such that whereas the said J. Charles Fleming has been on the 15th day of August, A. D. 1933, appointed by the Honorable Chas. I. Dawson, a conciliation commissioner under Section

75 of the Bankruptcy Act, in and for the County of Christian, in said district.

Now, Therefore, if the said J. Charles Fleming shall well and faithfully discharge and perform all the duties pertaining to the said office of conciliation commissioner, then this obligation to be void; otherwise to remain in full force and virtue.

Signed and sealed in the presence of

J. Chas. Fleming,

The Aetna Casualty and Surety Company,

By Jno. R. Falconer,
Resident Vice President,

Attest: M. A. Korb,
Resident Assistant Secretary.

(Seal)

Approved this 30 day of Aug., 1933.

Chas. I. Dawson,
District Judge.

ORDER APPROVING BOND OF J. CHAS. FLEMING, CONCILIATION COMMISSIONER—Entered June 29, 1934.

J. Chas. Fleming having been appointed Conciliation Commissioner and required to give bond for the faithful discharge of his duties in the sum of $1,500.00, said bond having been reduced from $5,000.00, now comes said J. Chas. Fleming, with the American Surety Co. of New York, as surety, and tenders a bond in the aforesaid sum, conditioned according to law, which bond is examined and approved by the Court, so endorsed by the Judge and ordered to be filed in the Clerk's office as a part of the record.

This bond is in lieu of the bond of $5,000.00, with the Aetna Casualty & Surety Co. as surety, which bond has heretofore been cancelled.

Chas. I. Dawson,
Judge.

BOND OF CONCILIATION COMMISSIONER
—Filed June 29, 1934, Lilburn Phelps, Clerk.

Know all men by these presents: That we, John Charles Fleming, of Hopkinsville, Ky., as principal, and American Surety Company, of New York, as surety, are held and firmly bound to the United States of America, in the sum of Fifteen Hundred dollars ($1,500), lawful money of the United States, to be paid to the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed this the 28th day of May, A. D. 1934.

The condition of this obligation is such that whereas the said John Charles Fleming has been on the 28th day of May, A. D. 1934, appointed by the Honorable Chas. I. Dawson, judge of the District Court of the United States for the Western District of Kentucky, a conciliation commissioner under section 75 of the Bankruptcy Act, in and for the county of Christian, in said district:

Now, therefore, if the said John Charles Fleming shall well and faithfully discharge and perform all the duties pertaining to the said office of conciliation commissioner, then this obligation to be void; otherwise to remain in full force and virtue.

Bond of Conciliation Commissioner

Signed and sealed in the presence of—
J. Chas. Fleming,
American Surety Company of New York,
O. L. C. Radford, Res. Vice President,
V. Fenger, Res. Asst. Secy.
B#868563D
(Seal)

Countersigned at Hopkinsville, Ky.
By John W. Winfree.

Approved this the 29th day of June, 1934.
Chas. I. Dawson,
District Judge.

Thereafter, on February 26, 1934, the petitioner herein filed a debtor's petition in the office of the Clerk of the above named Court in words and figures as follows:

DEBTOR'S PETITION—Filed February 26, 1934.

To the Honorable Charles I. Dawson,

Judge of the District Court of the United States for the Western Western District of Kentucky.

The Petition of William W. Radford, Sr., of Hopkinsville, in the County of Christian, and district and State of Kentucky,

Respectfully Represents: That he is personally bona fide engaged primarily in farming operations; that such farming operations occur in the county of Christian, within said judicial district; that he is insolvent and unable to meet his debts as they mature; and that he desires to effect a composition or an extension of time to pay his debts under Section 75 of the Bankruptcy Act.

Debtor's Petition

That the schedule hereto annexed, marked "A," and verified by your petitioner's oath, contains a true and full statement of all his debts, and the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said act.

That the schedule hereto annexed, marked "B," and verified by your petitioner's oath, contains a full and accurate inventory of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said act.

Wherefore your petitioner prays that his petition may be approved by the court and proceedings had in accordance with the provisions of said section.

William W. Radford, Sr.

United States of America, District of Kentucky, ss:

I, William W. Radford, the foregoing petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge and belief.

William W. Radford, Sr.

Subscribed and sworn to before me this 18th day of September, A. D. 1933.

Kate T. Boyd,
Notary Public Christian Co. Ky.

(Seal of Notary)

(By agreement of counsel, the schedules attached to the foregoing petition are omitted from this record and it is stipulated that said schedules set forth the mortgage debt to Louisville Joint Stock Land Bank as is set forth in its answer.)

And thereupon the following orders were made and entered of record in this proceeding.

ORDER—Entered February 27, 1934.

At Louisville, in said district, on the 27th day of February A. D. 1934, before Chas. I. Dawson, Judge of said court, the petition of William W. Radford, Sr., praying that he be afforded an opportunity to effect a composition or an extension of time to pay his debts under section 75 of the Bankruptcy Act, having been heard and duly considered, is approved as properly filed under said section.

Chas. I. Dawson,
Judge.

ORDER—Entered February 27, 1934.

Whereas the petition of William W. Radford, Sr., filed in this Court on the 26th day of February, A. D. 1934, praying that he be afforded an opportunity to effect a composition or an extension of time to pay his debts under section 75 of the Bankruptcy Act, having been duly approved by order of this court on the 27th day of February A. D. 1934, it is therefore ordered, that said matter be referred to J. Chas. Fleming, one of the conciliation commissioners of this court, to take such further proceedings therein as are required by said section; and that the said William W. Radford shall attend before said conciliation commissioner at such time and place as he shall designate and thence forth shall submit to such orders as may be made by said conciliation commissioner, or by this court relating to the proceedings under said section.

Chas. I. Dawson,
Judge.

And thereafter on November 10, 1934, an order was made and entered of record in said proceeding as follows:

ORDER—Entered November 10, 1934.

The Court, being advised in the premises, does grant leave to the petitioner to file a second amended and substituted petition herein, which said second amended and substituted petition is accordingly filed without prejudice to any rights and subject to the exception of Louisville Joint Stock Land Bank of Louisville, Kentucky.

Louisville Joint Stock Land Bank files its answer to the second amended and substituted petition of the petitioner herein, and said petitioner files his replication to the answer of Louisville Joint Stock Land Bank of Louisville, Kentucky, to the second amended petition and substituted petition of the petitioner herein.

Chas. I. Dawson,
District Judge.

SECOND AMENDED AND SUBSTITUTED PETITION OF THE PETITIONER, RADFORD—Filed November 10, 1934.

Now on this day comes the petitioner, Radford, and files this his second amended and substituted petition herein, the same to be in lieu of and a substitute for his first amended petition, so that said first amended petition as amended by the second amended and substituted petition herein filed shall read as follows:

(1) Heretofore prior to the filing of the original petition herein, fifteen farmers of Christian County, Kentucky, did certify that they intended to file petitions under Section 75 of the National Bankruptcy Act, approved March 3, 1933, and did request this Court to appoint for such County one Referee to be known as a Conciliation Commissioner. Thereupon, in accordance with said petition, this Court did appoint J. Charles

Fleming, as the Conciliation Commissioner within and for Christian County, Kentucky.

(2) On February 26, 1934, the petitioner, Radford, filed his petition in which he alleged that he was personally bona fide engaged primarily in farming operations; that such farming operations occurred in the County of Christian within said Judicial District; that he was insolvent and unable to meet his debts as they matured and that he desired to effect a composition or an extension of time in which to pay his debts under Section 75 of the Bankruptcy Act. The said petition was accompanied by the schedules of the petitioner required by law. And thereupon, the petitioner in his original petition herein prayed that his petition might be approved by the Court and that proceedings might be had in accordance with the provisions of said Section 75.

(3) Heretofore, prior to the filing of the original petition herein, the petitioner, Radford, herein was and still is a farmer, within the true intent and meaning of Section 75, National Bankruptcy Act, as enacted March 3, 1933, and as amended June 28, 1934; that for the greater part of the six months preceding the date of the original petition herein, the petitioner, Radford, resided and had his domicile in the County of Christian, in the State of Kentucky, and in the Western District thereof; and at the date of the original petition herein, the petitioner, Radford, was and still is insolvent and unable to pay his debts as they matured; that at the date of the original petition herein, it was and still is desirable to effect a composition and an extension of time in which to pay the debts of the petitioner, Radford.

(4) Upon the filing of the original petition herein, the Court did enter an order approving said petition as properly filed under Section 75, National Bankruptcy Act, and did refer said petition and the subsequent proceedings thereon to J. Charles Fleming, as a Conciliation Commissioner of this Court within and for the County aforesaid.

(5) After the filing of such petition, the said petitioner, Radford, did, within the time and in such form as the rules of this Court provide, file an inventory of his estate.

(6) Whereupon, the Conciliation Commissioner did call the first meeting of creditors of the said Radford, stating in the notice of said meeting that the said Radford proposed to offer terms of composition or extension

and did enclose with the notice a summary of the inventory a brief statement of the farmer's indebtedness as shown by the schedules and a list of the names and addresses of the secured creditors and unsecured creditors with the amounts owing to each as shown by the schedules.

(7) Thereupon, at the first meeting of the creditors of the said Radford, held March 23, 1934, the said Radford was examined in the manner required by law and submitted a composition and extension proposal.

Thereupon, the said Radford did fail, and has continued to fail, to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by the composition or extension proposal, which said composition or extension proposal was made by the said Radford.

Wherefore, the said Radford respectfully prays

(a) That he may be adjudged a bankrupt herein and that such further proceedings be had herein as are provided by Subsection S of Section 75 of the National Bankruptcy Act.

(b) That all of his property, whether pledged, encumbered by liens or otherwise, be appraised, and that his exemptions as prescribed by the State law, subject to any liens thereon, be set aside and that he be allowed to retain possession of all the remainder of his property and pay for the same under the terms and conditions set forth in Paragraph 3 of Subsection S of Section 75 of the National Bankruptcy Act as amended June 28, 1934.

(c) That if the lienholder herein does refuse to consent to such retention of possession and the payment for such property upon such terms and conditions as hereinbefore set forth in Subdivision (b) of this prayer and does file written objections to the manner of payment and distribution of the said Radford's property, that in accordance with Subdivision 7 of Subsection S of Section 75 of the National Bankruptcy Act, the Court, after having set aside the said Radford's exemptions as prescribed by the State law, shall stay all proceedings for a period of five years during which five years the said Radford shall retain possession of all his property under the control of the Court, provided the said Radford, as provided by law, pays a reasonable rental annually for that part of the property of which he retains possession and that at the end of the said period of five years, or at any time prior thereto, the said Radford may pay into Court, in the manner provided by law, the appraised

value of the property of which he retains possession and that he may apply for his discharge as provided by Paragraph 7 of Subsection S of Section 75 of the National Bankruptcy Act.

William W. Radford, Sr.,
Petitioner.

David A. Sachs, Jr.,
Frank Rives,
Edwin A. Krauthoff,
Attorneys for Petitioner.

State of Kentucky, }
County of Jefferson. } ss.

Edwin A. Krauthoff, being duly sworn, upon his oath states that he is the attorney for the petitioner herein and as such and for him makes this affidavit, the said petitioner being absent from Jefferson County, Kentucky, and that the matters and things set forth in the above second amended and substituted petition are true to the best of his knowledge and belief.

Edwin A. Krauthoff.

Subscribed and sworn to before me by Edwin A. Krauthoff this November 10, 1934.

My Commission expires Jan. 3, 1937.

Mary W. McCue,
Notary Public, Jefferson Co., Ky.

ANSWER OF LOUISVILLE JOINT STOCK LAND BANK TO SECOND AMENDED AND SUBSTITUTED PETITION—Filed November 10, 1934.

The Louisville Joint Stock Land Bank (hereinafter called the Bank) states as follows:

The Bank is, and at all times hereinafter mentioned was, a corporation organized and existing under that Act of Congress known as the Federal Farm Loan Act, with power to sue and be sued, to contract and be contracted with, and to lend money on first mortgages.

On or about August 2, 1922, W. W. Radford (hereinafter called Radford) and Nannie A. Radford, his wife (hereinafter called Mrs. Radford), for value received, signed, executed and delivered to the Bank a certain writing called a promissory note dated August 2, 1922, which said note was and is in words and figures as follows, to-wit:

Form L-12.

LOUISVILLE JOINT STOCK LAND BANK

LOUISVILLE, KY.

FIRST MORTGAGE NOTE

No. 71 $8,000.00

Howell, Kentucky, August 2, 1922.

For value received we promise to pay to the order of The Louisville Joint Stock Land Bank of Louisville, Kentucky, at its offices in the city of Louisville, Kentucky, the principal sum of Eight Thousand Dollars with interest from date on the whole amount of said principal sum remaining from time to time unpaid, at the rate of six per centum per annum, payments to be made on the amortization plan and in accordance with amortization tables promulgated by the Federal Farm Loan Board, said payments to be made in manner and form as follows: A preliminary interest payment to be made on the first day of March, 1923, being 6 per cent interest from date of this note until said time of payment and thereafter in sixty-five semi-annual payments of Two Hundred and Eighty Dollars each, payable on the first day of September & March in each year, and a final payment of Two Hundred Thirty-three & 50/100 Dollars, payable on the first day of March, 1956, and we further promise and agree to pay reasonable attorneys' fee in the event there is any default in the payment of this note as provided herein.

This instrument is negotiable and payable at The Louisville Joint Stock Land Bank at its offices in the city of Louisville, Kentucky, without any relief whatever from valuation or appraisement laws.

If any payment, or payments, herein provided for, are not paid when due, such defaulted payment, or payments, shall bear simple interest from the date of such default until paid at the highest rate of interest authorized by law, not exceeding eight per centum per annum.

The drawers and endorsers, and all parties to this instrument, severally waive presentment for payment, protest, notice of protest, notice of non-payment of this instrument, demand and all legal diligence in enforcing collection.

This note is secured by a deed of trust or mortgage of even date herewith, executed by W. W. Radford and Nannie A. Radford, his wife, to the said The Louisville Joint Stock Land Bank of Louisville, Kentucky, on lands in Christian County, Kentucky, which is the first lien on the property therein described. If any default be made in any of the payments provided for in this note, or in case of failure to perform any or either of the terms or conditions of said deed of trust or mortgage, the whole indebtedness secured by this deed of trust or mortgage, together with all interest on same shall, at the option of said The Louisville Joint Stock Land Bank, its successors, or assigns, become due and payable at once without demand or notice, notice of the exercise of such option being hereby expressly waived.

After five years from the date hereof, on any date when any regular installment becomes due hereunder, the maker or makers of this note shall have the option of making additional payments in the sum authorized by The Federal Farm Loan Act or any amendment thereof, for the reduction of the principal, or the payment of the entire principal, and any payment in reduction of principal so made shall be endorsed on this note. Such additional payments shall not reduce the fixed annual, or semi-annual, payments, provided for herein, but will pay off the loan at an earlier date. Whenever the whole principal hereof, together with all interest accrued thereon, shall have been fully paid, then all provisions herein for installment payments maturing thereafter shall be null and void and this note shall then be fully paid off and satisfied.

(signed) W. W. Radford,
(signed) Nannie A. Radford.

TREASURY DEPARTMENT
FEDERAL FARM LOAN BUREAU
Form 1325—80

Rate 6% | **Semiannual Installments $280.00** | **Final Installment $233.50** | **Principal $8,000.00**

AMORTIZATION TABLE

Year due	No.	Interest	Principal	Date Paid	Initial	Balance
1923	p	278.00		2-27		
1923	1	$240.00	$40.00	8-27	S	$7960.00
1924	2	238.80	41.20	3-1	C	7918.80
1924	3	237.56	42.44	8-30	C	7876.36
1925	4	236.29	43.71	3-9	C	7832.65
1925	5	234.98	45.02	9-18	B	7787.63
1926	6	233.63	46.37	3-1	C	7741.26
1926	7	232.24	47.76	2-19	C	7693.50
1927	8	230.81	49.19	2-26	S	7644.31
1927	9	229.33	50.67	8-23	S	7593.64
1928	10	227.81	52.19	2-5	S	7541.45
1928	11	226.24	53.76	9-11	M	7487.69
1929	12	224.63	55.37	2-8	M	7432.32
1929	13	222.97	57.03	8-29	M	7375.29
1930	14	221.26	58.74	8-19	M	7316.55
1930	15	219.50	60.50	9-15	M	7256.05
1931	16	217.68	62.32	4-3	M	7193.73
1931	17	215.81	64.19	9-9	M	7129.54
1932	18	213.89	66.11	3-18	M	7063.43
19...	19	211.90	68.10	.....	....	6995.33
19...	20	209.86	70.14	.....	....	6925.19
19...	21	207.76	72.24	.....	....	6852.95
19...	22	205.59	74.41	.....	....	6778.54
19...	23	203.36	76.64	.....	....	6701.90
19...	24	201.06	78.94	.....	....	6622.96
19...	25	198.69	81.31	.....	....	6541.65
19...	26	196.25	83.75	.....	....	6457.90
19...	27	193.74	86.26	.....	....	6371.64
19...	28	191.15	88.85	.....	....	6282.79
19...	29	188.48	91.52	.....	....	6191.27
19...	30	185.74	94.26	.....	....	6097.01
19...	31	182.91	97.09	.....	....	5999.92
19...	32	180.00	100.00	.....	....	5899.92
19...	33	177.00	103.00	.....	....	5796.92
19...	34	173.91	106.09	.....	....	5690.83
19...	35	170.72	109.28	.....	....	5581.55
19...	36	167.45	112.55	.....	....	5469.00
19...	37	164.07	115.93	.....	....	5353.07
19...	38	160.59	119.41	.....	....	5233.66
19...	39	157.01	122.99	.....	....	5110.67
19...	40	153.32	126.68	.....	....	4983.99

AMORTIZATION TABLE

Year Due	No.	Interest	Principal	Date paid	Initial	Balance
19...	41	$149.52	$130.48	.....	....	$4853.51
19...	42	145.60	134.40	.....	....	4719.11
19...	43	141.57	138.43	.....	....	4580.68
19...	44	137.42	142.58	.....	....	4438.10
19...	45	133.14	146.86	.....	....	4291.24
19...	46	128.74	151.26	.....	....	4139.98
19...	47	124.20	155.80	.....	....	3984.18
19...	48	119.52	160.48	.....	....	3823.70
19...	49	114.71	165.29	.....	....	3658.41
19...	50	109.75	170.25	.....	....	3488.16
19...	51	104.64	175.36	.....	....	3312.80
19...	52	99.38	180.62	.....	....	3132.18
19...	53	93.96	186.04	.....	....	2946.14
19...	54	88.38	191.62	.....	....	2754.52
19...	55	82.63	197.37	.....	....	2557.15
19...	56	76.71	203.29	.....	....	2353.86
19...	57	70.62	209.38	.....	....	2144.48
19...	58	64.33	215.67	.....	....	1928.81
19...	59	57.86	222.14	.....	....	1706.67
19...	60	51.20	228.80	.....	....	1477.87
19...	61	44.34	235.66	.....	....	1242.21
19...	62	37.27	242.73	.....	....	999.48
19...	63	29.98	250.02	.....	....	749.46
19...	64	22.48	257.52	.....	....	491.94
19...	65	14.76	265.24	.....	....	226.70
19...	66	6.80	226.70	.....	....	.....
19...	67	.....	.....	.....	....	.....
19...	68	.....	.....	.....	....	.....
19...	69	.....	.....	.....	....	.....
19...	70	.....	.....	.....	....	.....

71

(Interest payments ruled out are not paid.)

....., 19....

For value received we hereby guarantee the payment of the within note, according to the terms thereof, both as to principal and as to interest.

.....NATIONAL FARM LOAN ASSOCIATION.
By ....., Sec.-Treas.
By ....., President.

By said note Radford and Mrs. Radford, and each of them, agreed and promised to pay to the Bank the principal sum of $8,000 and interest at the rate of 6% per annum upon the amount of the principal sum remaining unpaid from time to time, and to pay the principal sum on the amortization plan which is set forth on the reverse side of said note.

To more fully secure the payment of said note, Radford and Mrs. Radford, on or about August 2, 1922, signed, executed, acknowledged and delivered to the Bank a certain writing called a mortgage, which was and is in words and figures as follows, to-wit:

MORTGAGE.

This Mortgage, made and entered into, this the 2nd day of August 1922, by and between W. W. Radford and Nannie A. Radford, his wife, of Christian County, Kentucky, parties of the first part, and The Louisville Joint Stock Land Bank, a corporation duly incorporated and existing under The Federal Farm Loan Act, the principal office and postoffice address of which is Louisville, Jefferson County, Kentucky, party of the second part,

Witnesseth: That the said parties of the first part in consideration of Eight Thousand Dollars, to them in hand paid and loaned by the party of the second part, the receipt of which is hereby acknowledged, do by these presents convey and mortgage unto the said party of the second part, its successors and assigns, the following described real estate, with its rents, issues and profits, situated in Christian County and State of Kentucky, more particularly described as follows:

Located 12 miles south of Hopkinsville on the Palmyra Road.

(1) On the east side of the Palmyra Road near Howell beginning at a stake or corner on the Palmyra Road; thence south 89 east 191¼ poles to a stake in Whitfield's old line; thence with said line south 1 west 106½ poles to a stake, formerly Mumford's corner; thence west 20 poles to a stake and pointers, Quarles corner; thence north 48½ west 47 poles to five small black oaks, another of Quarles' corners; thence with the Bell Station Road north 86½ west 138 poles to the Palmyra Road; thence with the center of said road north 3½ east 70 poles to the beginning, containing in all about 100 acres, more or less, but there is excepted from this conveyance 2 1/5 acres of land which was sold off of

said tract on June 10, 1887, by deed from R. W. Henry, Special Commissioner, to the Louisville & Nashville Railroad Company, see Deed Book 73, page 46, Christian County Court Clerk's office; and there is further excepted and excluded from this conveyance a certain tract of land conveyed to W. A. Haynes, comprising about three acres at the southwest corner of same, said three acres being conveyed to said Haynes by two deeds, respectively, one from Willie Link and his wife by deed dated January 1, 1897, of record in Deed Book 107, page 282, and the other one of date April 7, 1893 from Hunter Wood, Master Commissioner, of record in deed book 85, page 193, in the office aforesaid; there is also excepted two acres of real estate at the northwest corner of said tract which was conveyed by W. W. Radford and wife to the trustee of the Olivet Baptist Church on October 2, 1905, by deed of record in Deed Book 110, page 226, office aforesaid; said tract of land with the exceptions deducted contains 93 3/8 acres which it is intended that this mortgage shall cover and being the same land which was conveyed to W. W. Radford by deed from W. W. Link and Sallie E. Link, his wife, by deed dated August 27, 1897, of record in Deed Book, 96, page 326, in the aforesaid office.

(2) Beginning at a stake in the Palmyra Road; thence with the center of said road south 3½ west 40½ poles to a stake in the road; thence with Quarles line north 89 west 208 poles to a post oak stump; Giles' corner; thence with Giles' line north 1 east 41 poles to a post oak in Giles' line; thence south 89 east 208 poles to the beginning, and containing 53 acres, more or less; and being the same real estate conveyed to W. W. Radford on August 8, 1895, by W. W. Link by deed duly of record in Deed Book 94, at page 60, this tract adjoining the home place of the said W. W. Radford.

(3) Lying and being on the edge of Flat Lick near Jesse Giles' old place beginning at a stone near Fleming's fence in his line; runs thence south 63½ west 129 poles to a black oak in the edge of a glade with sassafras and post oak pointers; thence north 24 west 35 poles to a stake in the line between Radford and Giles with two hickories and post oak pointers; thence north 67 west 129 poles to a stake; thence south 24 east 31 poles to the beginning and containing 25 acres, and being the same land conveyed to W. W. Radford by E. C. Radford by deed of date December 28, 1904, and recorded in Deed Book 108, page 434, office aforesaid.

The Parties Of The First Part further agree that any and all royalties or moneys coming to them or any of them, directly or indirectly, from any and all coal, oil, gas or other mineral rights leased, granted, sold, reserved, or contracted, shall belong to and be paid to the party of the second part at its option and shall be applied to the reduction of the principal of the loan hereby secured.

The Parties Of The First Part further agree that any and all moneys due and payable to them, or any of them, in settlement of any and all damages accruing by reason of any and all leases now on or which may be placed on the above real estate during the term of this mortgage, shall belong to and be paid to the party of the second part at its option and shall be applied to the reduction of the principal of the loan hereby secured.

This Mortgage is given to secure said loan made by the party of the second part to the parties of the first part as is evidenced by a first mortgage note duly executed and delivered by W. W. Radford and Nannie A. Radford, his wife, to the party of the second part, and payable to its order; said note being in said principal sum of Eight Thousand Dollars, and bearing interest on same at the rate of six per centum per annum, payments to be made on the amortization plan in accordance with the terms and conditions of said first mortgage note, which is made a part of this mortgage as fully as if wholly written herein.

The Parties Of The First Part hereby expressly warrant the title to said real estate and further expressly covenant that they have a good right to sell, convey and mortgage the same; that same is free from all encumbrances, prior to, or on an equality with this mortgage, that they have a good and perfect title to the same against all persons whomsoever and that this mortgage is and shall be the first and best lien against said premises.

The Parties Of The First Part further convenant and agree with the party of the second part:

First, That they will pay, when due, all taxes, liens, judgments or assessments which may be lawfully assessed against the property hereby mortgaged and all charges of every character against the same and any such taxes, liens, judgments, assessments or charges, not paid when due, may be paid by the mortgagee and when so paid shall become immediately due to the party of the second part, shall become a part of the mortgage debt and shall bear simple interest at the rate of six per centum per annum until paid. The parties of the first

part further agree, immediately upon the payment of same, to furnish to the party of the second part receipts of the proper officers or parties, for all such payments, and it is agreed that all irregularities and defects in the levy or assessment and the right to insist that the personal property be first exhausted in the payment of such taxes and assessments are hereby expressly waived, and the receipt of the proper officers shall be conclusive evidence as to the amount and validity of such payments. The parties of the first part will, during the term of this mortgage, duly assess said real estate for taxation at the time prescribed by law.

Second, That the whole and every portion of said loan shall be expended only for the purposes specified in the original application, which application is hereby made a part of this mortgage the same as if fully copied herein, except that the party of the second part may permit said loan to be used for any other purpose authorized by the Federal Farm Loan Act, said permission to be given in writing only.

Third, That said loan is to be repaid on an amortization plan by means of a fixed number of annual, or semi-annual, installments sufficient to cover the charges and amounts to be applied on the principal, as provided in, and required by, The Federal Farm Loan Act as is fully provided for in said first mortgage note.

Fourth, To take good care of said real estate and not to commit waste, or allow the same to be committed on said premises, but will cause the same to be worked and cultivated in a proper and farmer-like manner at all times and will not cut or remove any timber or improvements from said land, except such as may be needed for ordinary farming purposes, and shall keep said lands in as good condition for farming purposes as they are now in and will keep the houses, fences and other improvements on said land in good condition and repair at all times.

Fifth, To pay all expenses incurred by the party of the second part in securing abstracts of title and for attorneys' fees in protecting the security of this mortgage, or in foreclosing the same, together with all necessary expenses pertaining thereto, all of which amounts shall become due when paid, shall become part of this mortgage, and shall bear interest at six per centum per annum from the time same shall be paid by the party of the second part until the party of the second part shall be fully repaid the same. In case of foreclosure all of said expenses may be made a part of the judgment.

Sixth, That upon the institution of proceedings to foreclose this mortgage the plaintiff shall be entitled to have a receiver appointed by the Court to take possession and control of the premises, to collect the rents and profits, and to put said premises in good repair suitable for farming.

Seventh, To keep the buildings upon said premises insured against loss or damage by fire in some good, reliable insurance company or companies, to be approved by the party of the second part, its successors or assigns, to the amount of not less than One Thousand Dollars, with loss, if any, payable to said party of the second part, its successors or assigns, as its, or their, interest may appear at time of loss, and forthwith upon issue shall deposit said policy with said party of the second part, its successors or assigns. In the event the parties of the first part shall fail to furnish or pay for said insurance, then the party of the second part shall have the right to procure and pay for said insurance; and unless the parties of the first part shall immediately reimburse the party of the second part therefor, then the party of the second part shall have the right at any time to declare the note secured by this mortgage due and payable.

In The Event there is any default of any amortization payment called for herein, or any part thereof, or any delinquent taxes against the land covered by this mortgage, or the parties of the first part fail to insure and keep the premium paid on the buildings situated on the land described herein, then it is agreed by the parties of the first part that any second lienholder, or any party or parties directly or indirectly interested in this loan, may then pay such amortization payment, taxes or insurance premium, and are hereby given a lien on the property described herein, subject to the lien of The Louisville Joint Stock Land Bank, to secure the amount of any such payment or payments, with interest thereon from the date of the payment so made and the cost of enforcing its lien. It is further agreed by the parties of the first part that in the event any one or more of the parties mentioned in this paragraph pay any amortization payment, delinquent taxes or past due insurance premium, as set out herein, then such party or parties are to have the option to immediately enforce the lien to the amount of such payment and sell the property described herein, subject to the lien of The Louisville Joint Stock Land Bank, in satisfaction of such payment or payments, interests and costs. It is further agreed by

parties of the first part that in the event default is made in any amortization payment, taxes due on the property described herein, or insurance premium due on the buildings situated upon the land described herein, and there is a foreclosure of same by the party making such payments, then The Louisville Joint Stock Land Bank has an option to declare due and payable its note secured by this mortgage and may enforce its lien and sell said property at the same time it is sold by any such party making such payment or payments.

This Mortgage and the note secured thereby are executed and delivered under and in accordance with the same Federal Farm Loan Act, and are subject to all the terms, conditions and provisions thereof, which Act is made a part hereof the same as if set out in full herein.

The Condition Of This Mortgage is, that if the parties of the first part shall well and truly make all the payments called for in said first mortgage note in accordance with its terms and tenor and shall perform each and every one of the convenants, conditions and agreements, either in said note or this mortgage contained, then the same shall be null and void, but if the parties of the first part shall, in any wise be in default in respect to any of such payments, or in respect to the performance of any of the conditions, covenants or agreements in said note or this mortgage contained, then the whole indebtedness provided for herein or in said note, together with all interest on same, all of which is hereby secured by this mortgage, shall, at the option of the said The Louisville Joint Stock Land Bank, its successors or assigns, become due and payable forthwith without demand or notice, notice of exercise of such option being hereby expressly waived, and same may be immediately collected by suit to enforce the same.

When This Mortgage shall have been fully paid off in accordance with its terms and tenor, then same shall be duly released by the party of the second part, but all legal fees pertaining to such release shall be paid by the parties of the first part.

In Testimony whereof, witness the hand of the parties of the first part this the day and date first above written.

(Signed) W. W. Radford,
" Nannie A. Radford.

State of Kentucky,
Christian County.

I, L. E. Dixon, a Notary Public, in and for the County and State aforsaid do certify that on this day the foregoing mortgage from W. W. Radford and Nannie A. Radford, his wife, to The Louisville Joint Stock Land Bank was produced to me and was acknowledged and delivered by W. W. Radford and Nannie A. Radford, his wife, parties thereto to be their act and deed.

Witness my hand this the 3rd day of August, 1922.

L. E. Dixon,
Notary Public, Christian County, Ky.
(Official Designation)

My commission expires Jan. 21—

Said mortgage was duly recorded on August 9, 1922 in Mortgage Book 110, page 345, in the Christian County Court Clerk's office, and constitutes a lien on the mortgaged real estate described therein, and the rents and profits therefrom, prior and superior to all other interests in, claims and liens on said mortgaged property.

The Bank is the owner and holder of said note and mortgage and at all times herein mentioned was the owner and holder thereof.

Radford and Mrs. Radford paid the installments due on said note to and including the installment due on March 1, 1932, but failed and refused to pay, and have not paid, the installments due on September 1, 1932, March 1, 1933, September 1, 1933 and March 1, 1934, or any part thereof, or any interest thereon, except a payment of $9.55 interest made on December 24, 1932. The said installments which were paid were respectively paid on the dates set opposite the installment on the reverse side of said note.

On or about January 30, 1924, Radford and Mrs. Radford, for value received, signed, executed and delivered to the Bank a certain writing called a promissory note dated January 30, 1924, which note was and is in words and figures as follows, to-wit:

Form L-12.

LOUISVILLE JOINT STOCK LAND BANK

LOUISVILLE, KY.

FIRST MORTGAGE NOTE $1,000.00

No. 1204

Howell, Kentucky, January 30, 1924.

For value received we promise to pay to the order of The Louisville Joint Stock Land Bank of Louisville, Kentucky, at its offices in the city of Louisville, Kentucky, the principal sum of One Thousand Dollars with interest from date on the whole amount of said principal sum remaining from time to time unpaid, at the rate of six per centum per annum, payments to be made on the amortization plan and in accordance with amortization tables promulgated by the Federal Farm Loan Board, said payments to be made in manner and form as follows: A preliminary interest payment to be made on the first day of March, 1924, being 6 per cent interest from date of this note until said time of payment and thereafter in sixty-five semi-annual payments of Thirty-five and no/100 Dollars each, payable on the first day of September & March in each year, and a final payment of Twenty-Nine & 23/100 Dollars, payable on the first day of March, 1957, and we further promise and agree to pay reasonable attorneys' fee in the event there is any default in the payment of this note as provided herein.

This instrument is negotiable and payable at The Louisville Joint Stock Land Bank at its offices in the city of Louisville, Kentucky, without any relief whatever from valuation or appraisement laws.

If any payment, or payments, herein provided for, are not paid when due, such defaulted payment, or payments, shall bear simple interest from the date of such default until paid at the highest rate of interest authorized by law, not exceeding eight per centum per annum.

The drawers and endorsers, and all parties to this instrument, severally waive presentment for payment, protest, notice of protest, notice of non-payment of this instrument, demand and all legal diligence in enforcing collection.

This note is secured by a mortgage of even date herewith, executed by W. W. Radford and Nannie A. Radford, his wife to the said The Louisville Joint Stock Land Bank of Louisville, Kentucky, on lands in Christian County, Kentucky, which is the first lien on the property therein described. If any default be made in any of the payments provided for in this note, or in case of failure to perform any or either of the terms or conditions of said mortgage, the whole indebtedness secured by this mortgage, together with all interest on same shall, at the option of said The Louisville Joint Stock Land Bank, its successors, or assigns, become due and payable at once without demand or notice, notice of the exercise of such option being hereby expressly waived.

After five years from the date hereof, on any date when any regular installment becomes due hereunder, the maker or makers of this note shall have the option of making additional payments in the sum authorized by The Federal Farm Loan Act or any amendment thereof, for the reduction of the principal, or the payment of the entire principal, and any payment in reduction of principal so made shall be endorsed on this note. Such additional payments shall not reduce the fixed annual, or semi-annual, payments, provided for herein, but will pay off the loan at an earlier date. Whenever the whole principal hereof, together with all interest accrued thereon, shall have been fully paid, then all provisions herein for installment payments maturing thereafter shall be null and void and this note shall then be fully paid off and satisfied.

(signed) W. W. Radford,

(signed) Nannie A. Radford.

TREASURY DEPARTMENT
FEDERAL FARM LOAN BUREAU
Form 1325

Rate 6%	Semiannual Installments 35.00	Final Installment 29.23	Principal 1,000.00

AMORTIZATION TABLE

Year Due	No.	Interest	Principal	Date paid	Initial	Balance
1924	p	5.00	.....	3-1	C	.....
1924	1	30.00	5.00	8-30	C	995.00
1925	2	29.85	5.15	3-2	C	989.85
1925	3	29.70	5.30	9-18	B	984.55
1926	4	29.54	5.46	3-1	C	979.09
1926	5	29.37	5.63	8-19	C	973.46
1927	6	29.20	5.80	2-26	S	967.66
1927	7	29.03	5.97	8-23	S	951.69
1928	8	28.85	6.15	3-25	S	955.54
1928	9	28.67	6.33	9-11	M	949.21
1929	10	28.48	6.52	2-8	M	942.69
19[illegible]	11	28.28	6.72	8-29	M	935.97
1930	12	28.08	6.92	2-19	M	929.05
1930	13	27.87	7.13	9-8	M	921.92
1931	14	27.66	7.34	4-34	M	914.58
1931	15	27.44	7.56	9-9	M	907.02
1932	16	27.21	7.79	3-1	M	899.23
1932	17	26.98	8.02	12-24	M	891.21
19...	18	.....	.....	.....	....	.....
19...	19	.....	.....	.....	....	.....
19...	20	.....	.....	.....	....	.....
19...	21	.....	.....	.....	....	.....
19...	22	.....	.....	.....	....	.....
19...	23	.....	.....	.....	....	.....
19...	24	.....	.....	.....	....	.....
19...	25	.....	.....	.....	....	.....
19...	26	.....	.....	.....	....	.....
19...	27	.....	.....	.....	....	.....
19...	28	.....	.....	.....	....	.....
19...	29	.....	.....	.....	....	.....
19...	30	.....	.....	.....	....	.....
19...	31	.....	.....	.....	....	.....
19...	32	.....	.....	.....	....	.....
19...	33	.....	.....	.....	....	.....
19...	34	.....	.....	.....	....	.....
19...	35	.....	.....	.....	....	.....
19...	36	.....	.....	.....	....	.....
19...	37	.....	.....	.....	....	.....
19...	38	.....	.....	.....	....	.....
19...	39	.....	.....	.....	....	.....
19...	40	.....	.....	.....	....	.....

AMORTIZATION TABLE

Year due	No.	Interest	Principal	Date Paid	Initial	Balance
19...	41	.....	.....	.....	....	.....
19...	42	.....	.....	.....	....	.....
19...	43	.....	.....	.....	....	.....
19...	44	.....	.....	.....	....	.....
19...	45	.....	.....	.....	....	.....
19...	46	.....	.....	.....	....	.....
19...	47	.....	.....	.....	....	.....
19...	48	.....	.....	.....	....	.....
19...	49	.....	.....	.....	....	.....
19...	50	.....	.....	.....	....	.....
19...	51	.....	.....	.....	....	.....
19...	52	.....	.....	.....	....	.....
19...	53	.....	.....	.....	....	.....
19...	54	.....	.....	.....	....	.....
19...	55	.....	.....	.....	....	.....
19...	56	.....	.....	.....	....	.....
19...	57	.....	.....	.....	....	.....
19...	58	.....	.....	.....	....	.....
19...	59	.....	.....	.....	....	.....
19...	60	.....	.....	.....	....	.....
19...	61	.....	.....	.....	....	.....
19...	62	.....	.....	.....	....	.....
19...	63	.....	.....	.....	....	.....
19...	64	.....	.....	.....	....	.....
19...	65	.....	.....	.....	....	.....
19...	66	.....	.....	.....	....	.....
19...	67	.....	.....	.....	....	.....
19...	68	.....	.....	.....	....	.....
19...	69	.....	.....	.....	....	.....
19...	70	.....	.....	.....	....	.....

1204

(Interest payments ruled out are not paid.)

....., 19....

For value received we hereby guarantee the payment of the within note, according to the terms thereof, both as to principal and as to interest.

.....NATIONAL FARM LOAN ASSOCIATION.

By ....., Sec.-Treas.

By ....., President.

By said note Radford and Mrs. Radford, and each of them, agreed and promised to pay to the Bank the principal sum of $1,000 with interest at the rate of 6% per annum upon the amount of the principal sum remaining unpaid from time to time, and to pay the principal sum on the amortization plan which is set forth on the reverse side of said note.

To more fully secure the payment of the said note, Radford and Mrs. Radford, on or about January 30, 1924, signed, executed, acknowledged and delivered to the Bank a certain writing called a mortgage which was and is in words and figures as follows, to-wit:

MORTGAGE.

This Mortgage, made and entered into, this the 30th day of January, 1924, and between W. W. Radford and Nannie A. Radford, his wife, of Christian County, Kentucky, parties of the first part, and The Louisville Joint Stock Land Bank, a corporation duly incorporated and existing under The Federal Farm Loan Act, the principal office and postoffice address of which is Louisville, Jefferson County, Kentucky, party of the second part,

Witnesseth: That the said parties of the first part in consideration of One Thousand Dollars, to them in hand paid and loaned by the party of the second part, the receipt of which is hereby acknowledged, do by these presents convey and mortgage unto the said party of the second part, its successors and assigns, the following described real estate, with its rents, issues and profits, situated in Christian County and State of Kentucky, more particularly described as follows:

Located 12 miles south of Hopkinsville on the Palmyra Road.

(1) On the east side of the Palmyra Road near Howell beginning at a stake or corner on the Palmyra Road; thence south 89 east 191¼ poles to a stake in Whitfield's old line; thence with said line south 1 west 106½ poles to a stake, formerly Mumford's corner; thence west 20 poles to a stake and pointers, Quarles corner; thence north 48½ west 47 poles to five small black oaks, another of Quarles' corners; thence with the Bell Station Road north 86½ west 138 poles to the Palmyra Road; thence with the center of said road north 3½ east 70 poles to the beginning, containing in all about 100 acres, more or less, but there is excepted from this conveyance 2 1/5 acres of land which was sold off of

said tract on June 10, 1887, by deed from R. W. Henry, Special Commissioner, to the Louisville & Nashville Railroad Company, see Deed Book 73, page 46, Christian County Court Clerk's office; and there is further excepted and excluded from this conveyance a certain tract of land conveyed to W. A. Haynes, comprising about three acres at the southwest corner of same, said three acres being conveyed to said Haynes by two deeds, respectively, one from Willie Link and his wife by deed dated January 1, 1897, of record in Deed Book 107, page 282, and the other one of date April 7, 1893 from Hunter Wood, Master Commissioner, of record in deed book 85, page 193, in the office aforesaid; there is also excepted two acres of real estate at the northwest corner of said trac which was conveyed by W. W. Radford and wife to the trustees of the Olivet Baptist Church on October 2, 1905, by deed of record in Deed Book 110, page 226, office aforesaid; said tract of land with the exceptions deducted contains 93 3/8 acres which it is intended that this mortgage shall cover and being the same land which was conveyed to W. W. Radford by deed from W. W. Link and Sallie E. Link, his wife, by deed dated August 27, 1897, of record in Deed Book, 96, page 326, in the aforesaid office.

(2) Beginning at a stake in the Palmyra Road; thence with the center of said road south 3½ west 40½ poles to a stake in the road; thence with Quarles line north 89 west 208 poles to a post oak stump; Giles' corner; thence with Giles' line north 1 east 41 poles to a post oak in Giles' line; thence south 89 east 208 poles to the beginning, and containing 53 acres, more or less; and being the same real estate conveyed to W. W. Radford on August 8, 1895, by W. W. Link by deed duly of record in Deed Book 94, at page 60, this tract adjoining the home place of the said W. W. Radford.

(3) Lying and being on the edge of Flat Lick near Jessie Giles' old place beginning at a stone near Fleming's fence in his line; runs thence south 63½ west 129 poles to a black oak in the edge of a glade with sassafras and post oak pointers; thence north 24 west 35 poles to a stake in the line between Radford and Giles with two hickories and post oak pointers; thence north 67 west 129 poles to a stake; thence south 24 east 31 poles to the beginning and containing 25 acres, and being the same land conveyed to W. W. Radford by E. C. Radford by deed of date December 28, 1904, and recorded in Deed Book 108, page 434, office aforesaid.

It is understood and agreed by the parties hereto that this mortgage shall stand on an equality with another mortgage for $8,000.00 between the same parties, dated the 2nd day of August 1922, recorded in Deed Book 110, page 345, in the aforesaid office and that the lien created by said mortgage dated August 2, 1922 and the lien created by this mortgage shall together constitute a first and best lien against the property herein described. It is further agreed and understood by the parties hereto that failure on the part of the mortgagors to comply with the conditions in this mortgage or the aforesaid mortgage dated August 2, 1922 shall operate to mature the notes secured by each mortgage and at the option of the mortgagee said notes may be declared immediately due and payable and the mortgagee shall have all the rights privileges afforded by each and both mortgages as if each and both said notes had fully matured.

The Parties Of The First Part further agree that any and all royalties or moneys coming to them or any of them, directly or indirectly, from any and all coal, oil, gas or other mineral rights leased, granted, sold, reserved, or contracted, shall belong to and be paid to the party of the second part at its option and shall be applied to the reduction of the principal of the loan hereby secured.

The Parties Of The First Part further agree that any and all moneys due and payable to them, or any of them, in settlement of any and all damages accruing by reason of any and all leases now on or which may be placed on the above real estate during the term of this mortgage, shall belong to and be paid to the party of the second part at its option and shall be applied to the reduction of the principal of the loan hereby secured.

This Mortgage is given to secure said loan made by the party of the second part to the parties of the first part as is evidenced by a first mortgage note duly executed and delivered by W. W. Radford and Nannie A. Radford, his wife, to the party of the second part, and payable to its order; said note being in said principal sum of One Thousand Dollars, and bearing interest on same at the rate of six per centum per annum, payments to be made on the amortization plan in accordance with the terms and conditions of said first mortgage note, which is made a part of this mortgage as fully as if wholly written herein.

The Parties Of The First Part hereby expressly warrant the title to said real estate and further expressly covenant that they have a good right to sell, convey and

mortgage the same; that same is free from all encumbrances, prior to, or on an equality with this mortgage, that they have a good and perfect title to the same against all persons whomsoever and that this mortgage is and shall be the first and best lien against said premises.

The Parties Of The First Part further convenant and agree with the party of the second part:

First, That they will pay, when due, all taxes, liens, judgments or assessments which may be lawfully assessed against the property hereby mortgaged and all charges of every character against the same and any such taxes, liens, judgments, assessments or charges, not paid when due, may be paid by the mortgagee and when so paid shall become immediately due to the party of the second part, shall become a part of the mortgage debt and shall bear simple interest at the rate of six per centum per annum until paid. The parties of the first part further agree, immediately upon the payment of same, to furnish to the party of the second part receipts of the proper officers or parties, for all such payments, and it is agreed that all irregularities and defects in the levy or assessment and the right to insist that the personal property be first exhausted in the payment of such taxes and assessments are hereby expressly waived, and the receipt of the proper officers shall be conclusive evidence as to the amount and validity of such payments. The parties of the first part will, during the term of this mortgage, duly assess said real estate for taxation at the time prescribed by law.

Second, That the whole and every portion of said loan shall be expended only for the purposes specified in the original application, which application is hereby made a part of this mortgage the same as if fully copied herein, except that the party of the second part may permit said loan to be used for any other purpose authorized by the Federal Farm Loan Act, said permission to be given in writing only.

Third, That said loan is to be repaid on an amortization plan by means of a fixed number of annual, or semi-annual, installments sufficient to cover the charges and amounts to be applied on the principal, as provided in, and required by, The Federal Farm Loan Act as is fully provided for in said first mortgage note.

Fourth, To take good care of said real estate and not to commit waste, or allow the same to be committed on said premises, but will cause the same to be worked and cultivated in a proper and former-like manner at all

times and will not cut or remove any timber or improvements from said land, except such as may be needed for ordinary farming purposes, and shall keep said lands in as good condition for farming purposes as they are now in and will keep the houses, fences and other improvements on said land in good condition and repair at all times.

Fifth, To pay all expenses incurred by the party of the second part in securing abstracts of title and for attorneys' fees in protecting the security of this mortgage, or in foreclosing the same, together with all necessary expenses pertaining thereto, all of which amounts shall become due when paid, shall become part of this mortgage, and shall bear interest at six per centum per annum from the time same shall be paid by the party of the second part until the party of the second part shall be fully repaid the same. In case of foreclosure all of said expenses may be made a part of the judgment.

Sixth, That upon the institution of proceedings to foreclose this mortgage the plaintiff shall be entitled to have a receiver appointed by the Court to take possession and control of the premises, to collect the rents and profits, and to put said premises in good repair suitable for farming.

Seventh, To keep the buildings upon said premises insured against loss or damage by fire in some good, reliable insurance company or companies, to be approved by the party of the second part, its successors or assigns, to the amount of not less than One Thousand Dollars, with loss, if any, payable to said party of the second part, its successors or assigns, as its, or their, interest may appear at time of loss, and forthwith upon issue shall deposit said policy with said party of the second part, its successors or assigns. In the event the parties of the first part shall fail to furnish or pay for said insurance, then the party of the second part shall have the right to procure and pay for said insurance; and unless the parties of the first part shall immediately reimburse the party of the second part therefor, then the party of the second part shall have the right at any time to declare the note secured by this mortgage due and payable.

In The Event there is any default of any amortization payment called for herein, or any part thereof, or any delinquent taxes against the land covered by this mortgage, or the parties of the first part fail to insure and keep the premium paid on the buildings situated on the land described herein, then it is agreed by the parties

of the first part that any second lienholder, or any party or parties directly or indirectly interested in this loan, may then pay such amortization payment, taxes or insurance premium, and are hereby given a lien on the property described herein, subject to the lien of The Louisville Joint Stock Land Bank, to secure the amount of any such payment or payments, with interest thereon from the date of the payment so made and the cost of enforcing its lien. It is further agreed by the parties of the first part that in the event any one or more of the parties mentioned in this paragraph pay any amortization payment, delinquent taxes or past due insurance premium, as set out herein, then such party or parties are to have the option to immediately enforce the lien to the amount of such payment and sell the property described herein, subject to the lien of The Louisville Joint Stock Land Bank, in satisfaction of such payment or payments, interests and costs. It is further agreed by parties of the first part that in the event default is made in any amortization payment, taxes due on the property described herein, or insurance premium due on the buildings situated upon the land described herein, and there is a foreclosure of same by the party making such payments, then The Louisville Joint Stock Land Bank has an option to declare due and payable its note secured by this mortgage and may enforce its lien and sell said property at the same time it is sold by any such party making such payment or payments.

This Mortgage and the note secured thereby are executed and delivered under and in accordance with the said Federal Farm Loan Act, and are subject to all the terms, conditions and provisions thereof, which Act is made a part hereof the same as if set out in full herein.

The Condition Of This Mortgage is, that if the parties of the first part shall well and truly make all the payments called for in said first mortgage note in accordance with its terms and tenor and shall perform each and every one of the convenants, conditions and agreements, either in said note or this mortgage contained, then the same shall be null and void, but if the parties of the first part shall, in any wise, be in default in respect to any of such payments, or in respect to the performance of any of the conditions, covenants or agreements in said note or this mortgage contained, then the whole indebtedness provided for herein or in said note, together with all interest on same, all of which is hereby secured by this mortgage, shall, at the option of the said The Louisville Joint Stock Land Bank, its successors or assigns, become

due and payable forthwith without demand or notice, notice of exercise of such option being hereby expressly waived, and same may be immediately collected by suit to enforce the same.

When This Mortgage shall have been fully paid off in accordance with its terms and tenor, then same shall be duly released by the party of the second part, but all legal fees pertaining to such release shall be paid by the parties of the first part.

In Testimony whereof, witness the hand of the parties of the first part this the day and date first above written.

(Signed) W. W. Radford,
" Nannie A. Radford.

State of Kentucky,
Christian County.

I, L. E. Dixon, a Notary Public, in and for the County and State aforesaid do certify that on this day the foregoing mortgage from W. W. Radford and Nannie A. Radford, his wife, to The Louisville Joint Stock Land Bank was produced to me and was acknowledged and delivered by W. W. Radford and Nannie A. Radford, his wife, parties thereto to be their act and deed.

Witness my hand this the 30th day of January, 1924.

Daisy Aldridge,
Notary Public, Christian County, Ky.
(Official Designation)

My commission expires.....
(Seal).

Said mortgage was duly recorded on February 5, 1924, in Mortgage Book 114, page 257, in the Christian County Court Clerk's office, and constitutes a lien on the mortgaged real estate described therein, and the rents and profits therefrom, prior and superior to all other interests in, claims and lien on said mortgaged property.

The Bank is the owner and holder of said note and mortgage dated January 30, 1924, and at all times herein mentioned was the owner and holder thereof.

Radford and Mrs. Radford paid the installments due on said note of January 30, 1924, to and including the installment due on September 1, 1932, but failed and refused to pay the installments due on March 1, 1933, September 1, 1933, and March 1, 1934, or any part thereof, or any interest thereon. The said installments which

were paid were respectively paid on the dates set opposite the installment on the reverse side of said note. The aforesaid mortgages respectively dated August 2, 1922, and January 30, 1924, covered and mortgaged the same property.

Radford and Mrs. Radford, on July 12, 1933, failed and refused to insure the buildings upon the mortgaged land again loss or damage by fire in the sum of $1,000, or any sum. Thereupon the Bank, on July 12, 1933, insured said buildings in the sum of $1,000 against loss or damage by fire, and paid a premium therefor in the sum of $82.00.

Radford and Mrs. Radford have failed and refused to pay the taxes levied and assessed against the mortgaged property and falling due for the years 1931, 1932, and 1933 or any part thereof, and said taxes are now delinquent and unpaid.

On June 5, 1933, pursuant to the terms of the aforesaid notes and mortgages, the Bank declared the entire indebtedness evidenced by said notes and mortgages immediately due and payable.

On June 5, 1933, there was due and owing by Radford and Mrs. Radford to the Bank (1) the sum of $7,063.43 on account of said note and mortgage dated August 2, 1922, together with interest thereon at the rate of 6% per annum from March 1, 1932, until paid, less a credit of $9.55 previously paid on said interest, and (2) the sum of $891.21 on account of said note and mortgage dated January 30, 1924, together with interest thereon at the rate of 6% per annum from September 1, 1932, until paid. No part of either of said sums or any interest thereon has been paid.

On June 23, 1933, the Bank duly instituted suit on the aforesaid notes and mortgages against Radford and Mrs. Radford in the Christian Circuit Court, which then was and now is a duly constituted court of the State of Kentucky of competent jurisdiction, and filed in the office of the Clerk of that court a petition in equity which was and is in words and figures as follows, to-wit: (except that Exhibits A, B, D and E filed therewith, which are the notes and mortgages hereinbefore set forth, are not recopied herein and Exhibit C filed therewith is not copied herein).

STATE OF KENTUCKY.
CHRISTIAN CIRCUIT COURT.

No. 15481.
Louisville Joint Stock Land Bank, - - Plaintiff,

v.

W. W. Radford,
Nannie A. Radford, his wife,
A. B. Broadbent, Trustee, and
Allen Radford, - - - - - Defendants.

PETITION IN EQUITY.

PARAGRAPH I.

Plaintiff, Louisville Joint Stock Land Bank, states it is and at all times herein mentioned was a corporation organized and existing under an Act of Congress, known as the Federal Farm Loan Act, with power to sue and be sued, contract and be contracted with and to lend money on first mortgages.

It states that the defendants, W. W. Radford and Nannie A. Radford, his wife, by their promissory note dated August 2, 1922, executed and delivered to this plaintiff, promised and agreed to pay it the sum of $8,000.00 on the amortization plan as set out in said note with six per cent per annum interest thereon from date until paid. No part of said note has been paid except the interest thereon to March 1, 1932, and $936.57 on the principal, leaving an unpaid balance of $7,063.43 with 6% interest thereon from March 1, 1932, until paid, less a credit of $9.55 paid on said interest. Copy of said note is filed herewith and made a part hereof marked "Exhibit A" and the original will be filed at the time or before this action is submitted for trial.

It states that simultaneously with the execution of said note and in order to secure the payment of same, the defendants, W. W. Radford and Nannie A. Radford, his wife, executed to it their first mortgage on three certain tracts or parcels of land, together with the rents, issues and profits arising therefrom, located in Christian Coun-

ty, State of Kentucky, about 12 miles south of Hopkinsville on the Palmyra Road, described as follows, to-wit:

"First Tract—On the east side of the Palmyra Road near Howell beginning at a stake or corner on the Palmyra Road; thence south 89 each 191¼ poles to a stake in Whitfield's old line; thence with said line south 1 west 106½ poles to a stake, formerly Mumford's corner; thence west 20 poles to a stake and pointers, Quarles corner; thence north 48½ west 47 poles to five small black oaks, another of Quarles' corners; thence with the Bell Station Road north 86½ west 138 poles to the Palmyra Road; thence with the center of said road north 3½ east 70 poles to the beginning, containing in all about 100 acres, more or less, but there is excepted from this conveyance 2 1/5 acres of land which was sold off of said tract on June 10, 1887, by deed from R. W. Henry, Special Commissioner, to the Louisville & Nashville Railroad Company, see Deed Book 73, page 46, Christian County Court Clerk's office; and there is further excepted and excluded from this conveyance a certain tract of land conveyed to W. A. Haynes, comprising about three acres at the southwest corner of same, said three acres being conveyed to said Haynes by two deeds respectively, one from Willie Link and his wife by deed dated January 1, 1897, of record in Deed Book 107, page 282, and the other one of date April 7, 1893, from Hunter Wood, Master Commissioner, of record in Deed Book 85, page 193, in the office of the Christian County Court Clerk; there is also excepted two acres of real estate at the northwest corner of said tract which was conveyed by W. W. Radford and wife to the trustees of the Olivet Baptist Church on October 2, 1905, by deed of record in Deed Book 110, page 226, in the aforesaid office. Said tract of land with the exceptions deducted contains 93 3/8 acres which it is intended that this mortgage shall cover and being the same land which was conveyed to W. W. Radford by deed from W. W. Link and Sallie E. Link, his wife, by deed dated August 27, 1897, of record in Deed Book 96, page 326, in the aforesaid office.

Second Tract—Beginning at a stake in the Palmyra Road; thence with the center of said road south 3½ west 40½ poles to a stake in the road; thence with Quarles line north 89 west 208 poles to a

post oak stump, Giles' corner; thence with Giles line north 1 east 41 poles to a post oak in Giles line; thence south 89 east 208 poles to the beginning, and containing 53 acres more or less, and being the same real estate conveyed to said W. W. Radford on August 8, 1895, by W. W. Link by deed of record in Deed Book 94, page 60, aforesaid office, this tract adjoining the home place of the said W. W. Radford.

Third Tract—On the edge of Flat Lick near Jessie Giles' old place; beginning at a stone near Flemings fence in his line; runs thence south 63½ west 129 poles to a black oak in the edge of a glade with sassafras and post oak pointers; thence north 24 west 35 poles to a stake in the line between Radford and Giles with two hickories and post oak pointers; thence north 67 west 129 poles to a stake; thence south 24 east 31 poles to the beginning, and containing 25 acres, more or less; and being the same land conveyed to W. W. Radford by E. C. Radford by deed of date December 28, 1904, and recorded in Deed Book 108, page 434, in the aforesaid clerk's office."

Said mortgage was signed and acknowledged by the defendants, W. W. Radford and Nannie A. Radford, his wife, and recorded in the Christian County Court Clerk's office on August 9, 1922, in Mortgage Book 110, page 345. Copy of said mortgage is filed herewith and made a part hereof marked "Exhibit B" and the original will be filed at the time or before this action is submitted for trial. It states it has by virtue of said mortgage a first and superior lien on the above described real estate, with its rents, issues, and profits, to secure the balance of its note, namely, $7,063.43 with 6% interest thereon from March 1, 1932, until paid, less a credit of $9.55 paid on said interest, and its costs herein expended and it asks the court to so adjudge.

Plaintiff states that by the terms and conditions of said note so executed to it as hereinbefore set out and secured by said mortgage, it was expressly provided that if there be any default in any amortization payment, the whole indebtedness represented by said note remaining unpaid and secured by said mortgage, together with all interest thereon, should, at the option and election of this plaintiff, become due at once without demand or notice, notice of the exercise of such option being expressly waived in said note and mortgage. It states that the amortization payment of $280.00 due Septem-

ber 1, 1932, has not been paid the payment of like amount due March 1, 1933, has not been paid and by reason of said payments not being made, all of the indebtedness set out herein, at the option and election of this plaintiff, became due and payable and this plaintiff has elected to and declared all of said indebtedness represented by said note and secured by said mortgage due and payable and does hereby declare all of said indebtedness due and payable.

It further states that under the provisions of the mortgage executed to it by the defendants, W. W. Radford and Nannie A. Radford, his wife, it was agreed that in event foreclosure proceedings were filed that it would have the right to have a receiver appointed to take charge of said property; that the property mortgaged to it, together with the rents, issues and profits arising therefrom, is insufficient to discharge the indebtedness set out herein; that said property is depreciating in value; that the conditions of the mortgage are not being carried out; that the buildings and fencing are in need of repair; that by reason of these facts and the fact that unless a receiver is appointed the holders of the lien indebtedness against the above described property will suffer irreparable injury, it, together with the other lienholder, is entitled to have a receiver appointed to take charge of said property for the purpose of collecting the landlord's share of the, rents, issues and profits and to apply same to the discharge of its indebtedness set out herein.

It states that the defendant, A. B. Broadbent, Trustee, is claiming some interest in the above described property by reason of a mortgage dated March 23, 1925, recorded in Mortgage Book 117, page 21, County Court Clerk's office of Christian County, Kentucky, and he is made a party defendant and called upon to answer and set up any claim or interest he may have by reason of said mortgage. It states, however, that any claim or interest he may have as trustee in said mortgage is subsequent and inferior to that of this plaintiff and asks the court to so adjudge. It further states that said defendant, A. B. Broadbent, Trustee, is a non-resident of the State of Kentucky and as plaintiff believes is now absent therefrom; that he resides in Montgomery County in the State of Tennessee and that Clarksville in said county and state is the name of the place wherein a post office is kept nearest to the place where said defendant resides. Affidavit as to the non-residency of said de-

fendant, A. B. Broadbent, Trustee, is filed herewith and made a part hereof marked "Exhibit C."

It states that the defendant, Allen Radford, is a tenant on the above described real estate and he is called upon to set up any claim or interest he may have by reason of his tenancy in order that the court may determine the rights of the parties hereto and make the proper orders.

PARAGRAPH II.

Plaintiff, for its second cause of action, reaffirms all of the allegations of its first cause of action as if fully set out herein and says for its second cause of action that the said defendants, W. W. Radford and Nannie A. Radford, his wife, by a promissory note dated January 30, 1924, executed and delivered to it, agreed to pay it the sum of $1,000.00 on the amortization plan as set out in said note with six percent interest thereon from date until paid. No part of said note has been paid except the interest thereon to September 1, 1932 and $108.79 on the principal and there is a balance due this plaintiff on said note of $891.21 with 6% interest thereon from September 1, 1932, until paid. Copy of said note is filed herewith and made a part hereof marked "Exhibit D" and the original will be filed at the time or before this action is submitted for trial.

It states that simultaneously with the execution of said note the defendants, W. W. Radford and Nannie A. Radford, his wife, in order to secure the same mortgaged to it the tracts of land above described, together with the rents, issues and profits arising therefrom. Said mortgage was duly signed and acknowledged by said defendants, W. W. Radford and Nannie A. Radford, his wife, and recorded in the Christian County Court Clerk's office in Mortgage Book 114, page 257. Copy of said mortgage is filed herewith and made a part hereof marked "Exhibit E" and the original will be filed at the time or before this action is submitted for trial. It states that it has by virtue of said mortgage a lien on the above described real estate, together with the rents, issues and profits arising therefrom to secure its indebtedness of $891.21 with 6% interest thereon from September 1, 1932, until paid and its said lien for the indebtedness of $7,063.43 with 6% interest thereon from September 1, 1932 until paid, being the balance of the first note executed to it, and its lien for $891.21 with 6% interest thereon from September 1, 1932 until paid, being the unpaid balance of the last note executed to it

by said defendants, W. W. Radford and Nannie A. Radford, his wife, are first and superior liens on said real estate.

Plaintiff states that by the terms and conditions of the note so executed to it by the defendants, W. W. Radford and Nannie A. Radford, his wife, it was expressly provided therein if there be any default in any amortization payment provided for in said note, the whole indebtedness represented by said note remaining unpaid and secured by said mortgage, together with all interest thereon, should, at the option and election of this plaintiff, become due and payable at once without demand or notice, notice of the exercise of such option being expressly waived in said mortgage. It states that the amortization payment of $35.00 due March 1, 1933 on said note has not been paid and by reason of said payment not being made, all of the indebtedness represented by said note, at the option and election of this plaintiff, became due and payable and this plaintiff has elected to and declared all of said indebtedness due and payable and does hereby further declare all of said indebtedness represented by said note due and payable.

Plaintiff states that under the provisions of the mortgage executed to it, last above referred to, it was agreed and understood by the plaintiff and the defendants, W. W. Radford and Nannie A. Radford, his wife, that said mortgage should stand on an equality with the first mortgage of $8,000.00 above referred to and the lien created by said last mortgage should with the lien created by the first mortgage constitute a first and prior lien against the property above described. Plaintiff states that under said provisions above, said mortgages are of equal dignity and constitute a lien on said property of equal dignity for the aggregate amount of both thereof.

It states that said property is one farming unit and cannot be divided without materially impairing its value, it being not susceptible to division, and asks that said real estate be sold as a whole in satisfaction of all the lien debts shown to exist thereon. It states that there are now no liens known to exist against same except as set out herein.

Wherefore, plaintiff, Louisville Joint Stock Land Bank, prays that process issue to Christian County, Kentucky for the defendants, W. W. Radford, Nannie A. Radford, his wife, and Allen Radford; that a warning order be entered by the clerk of this court warning the defendant, A. B. Broadbent, Trustee, concerning the

nature and pendency of this action; that its debt set out herein be adjudged due and that it be given judgment against the defendant, W. W. Radford, for the sum of seven thousand, sixty-three and forty-three hundredths ($7,063.43) dollars with six percent interest thereon from March 1, 1932 until paid, less a credit of $9.55 paid on said interest; that it be given judgment against said defendant, W. W. Radford, for the further sum of eight hundred, ninety-one and twenty-one hundredths ($891.21) dollars with six percent interest thereon from September 1, 1932 until paid and its costs herein expended; that a receiver be appointed by this court to take charge of said property for the purpose of collecting the rents, issues and profits arising therefrom and apply same to plaintiff's indebtedness; that it be adjudged a first and superior lien on the real estate above described to secure its indebtedness herein set out, including interest and the costs of this action; that said two mortgages be adjudged of equal dignity and constitute a first lien on the property above described; that said property be sold as a whole in satisfaction of all the lien debts shown to exist thereon; that this plaintiff be adjudged a first and superior lien on the funds arising from the sale of said property as well as the rents issues and profits, to secure it in all of its indebtedness and costs herein, and finally it prays for all other proper and equitable relief to which it may be entitled.

H. W. Linton,
A. L. McDowell,
Attys. for Plaintiff,
Louisville Joint Stock Land Bank.

Thereupon summons was issued and served on Radford and Mrs. Radford. Said suit is hereinafter referred to as the Christian County suit.

Prior to instituting the Christian County suit, the Bank advised Radford and Mrs. Radford of the provisions of the Act known as "The Emergency Farm Mortgage Act of 1933," whereby their then existing indebtedness could be refinanced through the Federal Land Bank of Louisville and the Land Bank Commissioner with no payment of principal for five years and at an interest rate of 4½% for the first five years, and 5% thereafter; advised them of the procedure required under that Act; and urged them to avail themselves of its benefits. Radford and Mrs. Radford declined, failed and refused

to take any steps or make any effort to avail themselves of the benefits of that Act.

On September 27, 1933, pursuant to notice previously served on Radford and Mrs. Radford, the Bank, in open Court, moved the Christian Circuit Court to appoint a receiver to take charge of the mortgaged property.

At said time J. Charles Fleming, the duly appointed, constituted and acting Conciliation Commissioner for Christian County under §75 of the Bankruptcy Act as amended by Act of March 3, 1933, interposed an objection to the appointment of such a receiver on the ground that he was informed that Radford and Mrs. Radford desired to avail themselves of the benefits of §75 of the Bankruptcy Act. The Christian Circuit Court, over the objection and exception of the Bank, declined to appoint a receiver and ordered that the Christian County suit be held in abeyance for such time as might be necessary to allow Radford and Mrs. Radford to proceed under §75 of the Bankruptcy Act.

The Bank again advised and urged Radford and Mrs. Radford to avail themselves of the benefits of the "Emergency Farm Mortgage Act of 1933." Radford and Mrs. Radford again declined, failed and refused to take any steps or make any effort to avail themselves of the benefits of the "Emergency Farm Mortgage Act of 1933," or to attempt to refinance their indebtednesses to the Bank.

Thereafter, on October 20, 1933, the Bank, by counsel, in open court moved the Christian Circuit Court to enter a judgment in its favor againts Radford and Mrs. Radford in the Christian County suit because (1) Radford and Mrs. Radford had filed no pleading or defense to said petition, and (2) had taken no steps to avail themselves of the "Emergency Farm Mortgage Act of 1933."

Radford again appeared and stated that he desired to avail himself of §75 of the Bankruptcy Act, and, over the objection and exception of the Bank, the Christian Circuit Court refused to enter any judgment.

Thereafter, on October 23, 1933, J. Charles Fleming, Conciliation Commissioner, filed in the Christian County suit an intervening petition which was and is in words and figures as follows, to-wit:

> "Comes W. W. Radford, who states that he is defendant in the above styled action; that desiring to obtain the relief offered under §75 of the Amended Bankruptcy Act, he has filed his petition

and schedule as required under the said Act, and that he respectfully asks that no further proceedings be had in the above styled action until final disposition of his case in the Federal Court."

In fact, Radford did not file his petition or schedule in the United States District Court until February 26, 1934.

Thereafter, the Bank continued to and at numerous times did advise and urged Radford and Mrs. Radford to avail themselves of the benefits of the "Emergency Farm Mortgage Act of 1933," but Radford and Mrs. Radford have continuously declined, failed and refused, to and including the present time, to make any effort or to take any step to avail themselves of the benefits of that Act.

On February 26, 1934, Radford filed in the United States District Court for the Western District of Kentucky a petition under §75 of the Bankruptcy Act as amended.

In April, 1934, the Bank offered to accept from Radford and Mrs. Radford a deed to the mortgaged property in full satisfaction of all indebtedness due it from them on account of the aforesaid notes and mortgages and payment by it of the aforesaid insurance premium, and to assume the unpaid taxes against the mortgaged property. Radford and Mrs. Radford agreed to give the Bank a deed under those conditions. Thereafter, the Bank prepared such a deed, and on April 5, 1934, presented said deed to Radford and Mrs. Radford for signature. Radford and Mrs. Radford then repudiated their agreement and refused, and have continued to refuse, to sign such a deed.

On June 30, 1934, the Christian Circuit Court duly entered a judgment and order of sale in the Christian County suit which said judgment and order of sale was and is in words and figures as follows, to-wit:

"No. 15481

STATE OF KENTUCKY
CHRISTIAN CIRCUIT COURT

Louisville Joint Stock Land Bank, - - Plaintiff,

v. JUDGMENT AND ORDER OF SALE.

W. W. Radford, et al., - - - - - Defendants.

The above styled cause coming on for hearing and it appearing to the court that the defendants, W. W. Radford, Nannie A. Radford, his wife, and Allen Radford, having been duly summoned and having failed to answer herein and on motion of the plaintiff, Louisville Joint Stock Land Bank, this action is dismissed as to the defendant, A. B. Broadbent, Trustee, and the said cause coming on for further hearing and being submitted to the court for trial and judgment upon the pleadings and exhibits on file herein and the plaintiff, Louisville Joint Stock Land Bank, having this day filed with the clerk of this court its original notes and mortgages sued on herein and it appearing that all of said defendants are properly before the court and subject to its jurisdiction and it further appearing that the unpaid balance of plaintiff's mortgage of $7063.43 with six per cent interest thereon from March 1, 1932 until paid, less a credit of $9.55 paid on said interest, December 24, 1932, and the sum of $891.21 with six per cent interest thereon from September 1, 1932 until paid, constitutes a first and prior lien on the property hereinafter described, said amounts being adjudged by the court of equal dignity, and it is further adjudged by the court that the plaintiff recover of the defendant, W. W. Radford, the sum of seven thousand sixty-three and forty-three hundredths dollars ($7063.43) with six per cent interest thereon from March 1, 1932 until paid, less a credit of $9.55 paid on said interest, and the further sum of eight hundred ninety-one and twenty-one hundredths dollars ($891.21) with six per cent interest thereon from September 1, 1932 until paid, being the balance of its two notes sued on herein; that it also recover from said defendant its costs herein expended.

It is further adjudged by the court that the terms and conditions of the mortgage contracts of the plaintiff, Louisville Joint Stock Land Bank, with the defend-

ants, W. W. Radford, and Nannie A. Radford, his wife, have been violated and broken and that it is entitled to a foreclosure of its said mortgage contract.

It is further adjudged by the court that in order to secure its indebtedness as set out herein and the costs of this action the plaintiff, Louisville Joint Stock Land Bank, has a first and superior lien on three certain tracts or parcels of land, together with the rents, issues and profits arising therefrom, located in Christian County, Kentucky, more particularly described as follows:

In Christian County, Kentucky, about 12 miles south of Hopkinsville, on the Palmyra road, to-wit:

Tract #1.—A certain tract or parcel of land on the east side of the Palmyra Road near Howell, Christian County, Kentucky, Beginning at a stake or corner on the Palmyra Road; thence south 89 east 191¼ poles to a stake in Whitfield's old line, thence with said line south 1 west 106½ poles to a stake, formerly Mumford's corner, thence west 20 poles to a stake and pointers Quarles corner, thence north 48½ west 47 poles to five small black oaks, another of Quarles' corners, thence with the Bell Station Road north 86½ west 138 poles to the Palmyra Road; thence with the center of said road north 3½ east 70 poles to the beginning, containing in all about 100 acres, more or less, but there is excepted from this conveyance 2 1/5 acres of land which was sold off of said tract on June 10, 1887, by deed from R. W. Henry, Special Commissioner, to the Louisville & Nashville Railroad Company, see Deed Book 73, page 46, Christian County Court Clerk's office; and there is further excepted and excluded from this conveyance a certain tract of land conveyed to W. A. Haynes, comprising about three acres at the southwest corner of same, said 3 acres being conveyed to said Haynes by two deeds, respectively, one from Willie Link and his wife, by deed dated January 1, 1897, of record in Deed Book 107, page 282, and the other one of date April 7, 1893, from Hunter Wood, Master Commissioner, of record in Deed Book 85, page 193, in the office of the Christian County Court Clerk; there is also excepted two acres of real estate at the northwest corner of said tract, which was conveyed by W. W. Radford and wife to the Trustees of the Olivet Baptist Church on the 2nd of October 1905, by deed of record in Deed Book 110, page 226, in the office of the

Christian County Court Clerk. Said tract of land with the exceptions deducted contains 93⅜ acres, more or less, being the same land conveyed to W. W. Radford by deed from W. W. Link and Sallie E. Link, his wife, by deed dated August 27, 1897, of record in Deed Book 96, page 326, in the office of the Christian County Court Clerk.

Tract #2.—Beginning at a stake in the Palmyra Road, thence with the center of said road south 3½ west 40½ poles to a stake in the road; thence with Quarles line north 89 west 208 poles to a post oak stump Giles' corner; thence with Giles line north 1 east 41 poles to a post oak in Giles line; thence south 89 east 208 poles to the beginning, and containing 53 acres, more or less, being the same real estate conveyed to W. W. Radford on August 8, 1895, by W. W. Link, by deed recorded in the aforesaid clerk's office in Deed Book 94, page 60, this tract adjoining the home place of said W. W. Radford.

Tract #3.—Lying and being on the edge of Flat Lick near Jessie Giles' old place; beginning at a stone near Fleming's fence in his line runs thence south 63½ west 139 poles to a black oak in the edge of a glade with sassafras and post oak pointers; thence north 24 west 35 poles to a stake in the line between Radford and Giles; with two hickories and post oak pointers; thence north 67 west 129 poles to a stake; thence south 24 east 31 poles to the beginning, containing 25 acres, more or less; being the same land conveyed to W. W. Radford by E. C. Radford by deed dated December 28, 1904, recorded in Deed Book 108, page 434, in the clerk's office aforesaid.

It is further ordered and adjudged by the court that said property above described is considered one farming unit and cannot be divided without materially impairing its value and that said property be sold as a whole for the purpose of paying the lien indebtedness against same.

The Master Commissioner of the Christian Circuit Court will make said sale at the court house door in Hopkinsville, Christian County, Kentucky, on the first day of some regular term of the county or circuit court held in and for said county, at public outcry to the highest and best bidder, on a credit of six and twelve months. And he will take bonds for the purchase price of equal

amounts from the purchaser, with good personal security, payable to himself as such Commissioner, which bonds shall bear interest from the date of sale until paid at the rate of six percent per annum, and have the force and effect of a replevin bond, upon which execution may issue if not paid at maturity, with a lien retained on said real estate to better secure the payment thereof. In the event plaintiff becomes purchaser of said property above described at the sale thereof for an amount not exceeding its debt, interest and costs, bonds need not be executed.

Before making said sale said Commissioner will first advertise the time, terms and place thereof, and the sum for which it is to be made, together with a description of said property to be sold, by written or printed notices posted up, one at the court house door aforesaid and three others in the vicinity of the land to be sold, for at least ten days just prior to the day of the sale. He will also advertise said sale in a newspaper as provided by law for at least once a day for three consecutive days preceding the sale and will cause the land to be appraised as provided by law. Said commissioner will report his acts herein to the present or next term of court and will be allowed the regular statutory fees for making said sale.

Execution may issue for any part of the judgment of the plaintiff, Louisville Joint Stock Land Bank, against the defendant, W. W. Radford, that may remain unpaid after the sale of the property above described.

This action is left open for such future orders as the court may from time to time see proper to make.

Ira D. Smith,
Judge Christian Circuit Court."

Thereupon the Bank instructed its Christian County counsel to advertise said property for sale and proceed to sell said property as expeditiously as possible.

Section 75 of the Act of July, 1898, entitled "An Act to establish a uniform system of bankruptcy throughout the United States" as amended prior to 1933 (hereinbefore and hereinafter called the Bankruptcy Act) and as amended by Acts respectively approved March 3, 1933, June 7, 1934, June 28, 1934, and said Amendatory Acts approved respectively March 3, 1933, June 7, 1934, and June 28, 1934, and each of them, constitute an unconstitutional invasion of the rights reserved to the

States and of the rights reserved to the people by the Tenth Amendment to the Federal Constitution.

Said Section 75 and said Amendatory Acts respectively approved March 3, 1933, June 7, 1934, and June 28, 1934, and each of them, are in no true sense Bankruptcy Laws, or parts of Bankruptcy Laws, but are laws for the relief of debtors. The Congress of the United States had no power or authority to enact said Section 75, or either of said Amendatory Acts approved March 3, 1933, June 7, 1934, and June 28, 1934, under the delegation of power to it in Article 1, §8, of the Federal Constitution, which authorizes it to establish uniform laws on the subject of bankruptcies throughout the United States, or under any other provision of the Federal Constitution, and said Amendatory Acts approved March 3, 1933, June 7, 1934, and June 28, 1934, and said Section 75, and each of them, are in violation of the Federal Constitution.

Said Section 75 and said Amendatory Acts respectively approved March 3, 1933, June 7, 1934, and June 28, 1934, and each of them, are destructive of the Bank's business, and constitute a taking of its property without due process of law in violation of the Fifth Amendment to the Federal Constitution.

The judgment entered in the Christian County suit by the Christian Circuit Court is entitled to full faith and credit from this Court, and to allow this proceeding to be maintained or to hinder, delay or prevent the Bank from immediately proceeding to advertise and sell the mortgaged property under said judgment of the Christian Circuit Court is a denial of full faith and credit to that judgment and is in violation of Article 4, §1, of the Federal Constitution. Said Section 75 and said Amendatory Acts respectively approved March 3, 1933, June 7, 1934, and June 28, 1934, and each of them, as they are attempted to be applied in this proceeding and insofar as they purport to affect the right of the Bank to immediately advertise and sell the mortgaged property under said judgment of the Christian Circuit Court, are in violation of Article 4, §1, of the Federal Constitution.

The Bank has declined and declines and refuses to accept the composition and extension proposal offered by Radford, declines and refuses to consent to the sale

to Radford by the Trustee of any part of the bankrupt estate at the appraised or any value thereof upon the terms and conditions set forth in Paragraph 3 of Subsection S of Section 75 of the Bankruptcy Act; declines and refuses to agree to and objects and this answer shall be treated as a written objection by the Bank to the manner of payments and distribution of the debtor's property as provided for in said Subsection S of Section 75 of the Bankruptcy Act. The Bank further objects to Radford's being allowed to retain possession of all, or any part, of his property or to be given any right to purchase it under the provisions of Paragraph 7 of Subsection S of Section 75 of the Bankruptcy Act. The Bank refuses to agree to any composition or extension proposal, save a proposal whereby the Bank will either (1) be paid the full amount of its debt, together with interest thereon, or (2) whereby the Bank will be given a general warranty deed conveying to it in fee simple the mortgaged property in full satisfaction of the debt of Radford and Mrs. Radford.

Wherefore, Louisville Joint Stock Land Bank prays that (1) Section 75 of the Bankruptcy Act as amended and the Acts Amendatory to the Bankruptcy Act which were approved March 3, 1933, June 7, 1934, and June 28, 1934, and each of them, be adjudged to be unconstitutional, null and void; (2) the second amended and substituted petition herein and this proceeding be dismissed; (3) it be allowed to pursue its remedies in the Christian Circuit Court and to immediately advertise and sell the mortgaged property in accordance with the judgment heretofore entered by the Christian Circuit Court in the Christian County suit; and (4) it recover its costs herein expended, and (5) it be given all other proper relief.

John E. Tarrant,
Counsel for Louisville Joint Stock
Land Bank.

J. C. Engelhard states that he is Chairman of the Board of Directors and Vice President and the chief officer now in Jefferson County, Kentucky, of the Louisville Joint Stock Land Bank; that he has read the foregoing Answer of Louisville Joint Stock Land Bank to the Second Amended and Substituted Petition and that the denials and allegations therein contained are true as he verily believes.

J. C. Engelhard.

Subscribed and sworn to before me by J. C. Engelhard this November 10, 1934.

My Commission expires January 6, 1935.

Margaret Hennessey,
Notary Public, Jefferson Co., Ky.

(Seal)

REPLICATION—Filed Nov. 10, 1934.

The Debtor herein, for his replication to the Answer of Louisville Joint Stock Land Bank to Second Amended and Substituted Petition, does admit each and all of the allegations therein contained.

Frank Rives,
David A. Sachs, Jr.,
Edwin A. Krauthoff,
Counsel for Debtor.

ORDER—Entered November 14, 1934.

This cause having been submitted on the pleadings herein, and particularly on the objections contained in the answer of the Louisville Joint Stock Land Bank to the proceedings, upon the ground that the so-called Frazier-Lemke Act, the benefits of which are sought by the petitioner herein, is unconstitutional for the reasons set out in said answer; and the court having heard argument of counsel and being fully advised, is of the opinion that the said Act is constitutional and within the competency of Congress, for the reasons set out in the written opinion this day delivered, which is ordered to be filed and made a part of the record herein.

It Is Therefore Ordered that the objections of the Louisville Joint Stock Land Bank to this proceeding be and the same is overruled, to which ruling the said bank excepts; and the bank in open court having declined to plead further,—

It Is Ordered And Adjudged that William W. Radford, Sr. be and he is hereby adjudged a bankrupt within the true intent and meaning of the National Bankruptcy Act, as amended by the Act of June 28, 1934.

It Is Further Ordered that this proceeding be and it is now referred to Nat C. Cureton, a Referee in Bankruptcy of this court, to take such further proceedings herein as are authorized by said National Bankruptcy Act, as amended by the Act of June 28, 1934, and the said William W. Radford, Sr. shall henceforth attend before the said Referee at such times and places as may be ordered by said Referee, and be subject in all respects to the jurisdiction of said Referee.

To all of which the Louisville Joint Stock Land Bank excepts.

Chas. I. Dawson,
Judge.

OPINION—Filed Nov. 14, 1934.

After an unsuccessful effort to secure a composition or extension of his debts under Section 75 of the Bankruptcy Act, as added by the Act of March 3, 1933 (Section 203, Title 11, U. S. C. A.), the debtor filed an amended petition, as authorized by the Frazier-Lemke Act (Act of June 28, 1934), claiming the benefits of that Act. For convenience, the Act is set out in full in the margin.* At the time this amendment was filed the debtor

*(s) Any farmer failing to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a composition or extension proposal, or if he feels aggrieved by the composition or extension, may amend his petition or answer asking to be adjudged a bankrupt. Such farmer may, at the time of the first hearing, petition the court that all of his property, whether pledged, encumbered, or unencumbered, by liens or otherwise, be appraised, and that his exemptions as prescribed by the State law, subject to any liens thereon, be set aside and that he be allowed to retain possession of any part or parcel or all of the remainder of his property and pay for same under the terms and conditions set forth in this subsection (s).

(1) Upon such a request being made in the petition or answer, at the time of the first hearing, appraisers shall be designated and appointed. Such appraisers shall appraise all the property of the debtor at its then fair and reasonable value, not necessarily the market value at the time of such appraisal. The appraisals shall be made in all other respects, with right of objections, exceptions, and appeal, in accordance with this Act: *Provided*, That in case of real estate either party may file objections, exceptions, and appeals within one year from date of order approving the appraisal.

(2) After the value of the debtor's property shall have been fixed by the appraisal as herein provided, the referee shall issue an order setting aside to such debtor his exemptions as prescribed by the State law, subject to any existing mortgages or liens upon any such exemptions to an amount equal to the value, as fixed by the appraisal, of the value of such exempt property as is covered by any mortgage or lien, and shall further order that the possession, under the control of the court, of any part or parcel or all of the remainder of the debtor's property, shall remain in the debtor subject to a general lien, as security for the payment of the value thereof to the trustee of the creditors, if a trustee is appointed, such a lien to be subject to and inferior to all prior liens, pledges, or encumbrances. Such prior liens, pledges, or encumbrances shall remain in full force and effect, and the property covered by such prior liens, pledges, or encumbrances shall be subject to the payment of the claims of the secured creditors holding such prior liens, pledges, or encumbrances up to the actual value of such property as fixed by the appraisal provided for herein. All liens herein on livestock shall cover all increase, and all liens on real property shall cover all rental received or crops grown thereon by the debtor, as security for the payment of any sum that may be due or past due under the terms and provisions of the next paragraph, until the full value of any such particular property has been paid.

(3) Upon request of the debtor, and with the consent of the lien holder or lien holders, the trustee, after the order is made setting aside to the debtor his exemptions, shall agree to sell to the debtor any part, parcel, or all of the remainder of the bankrupt estate at [illegible] appraised value upon the following terms and conditions, and upon such other conditions as in the judgment of the trustee shall be fair and equitable:

a. Payment of 1 per centum interest upon the appraised price within one year from the date of said agreement.

was the owner of a 170 acre farm in Christian County, Kentucky, on which there were two mortgages, aggregating the principal sum of $9,000, in favor of the Louisville Joint Stock Land Bank. In 1933 foreclosure pro-

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b. Payment of 2½ per centum of the appraised price within two years from the date of said agreement.

c. Payment of an additional 2½ per centum of the appraised price within three years from the date of said agreement.

d. Payment of an additional 5 per centum of the appraised price within four years from the date of said agreement.

e. Payment of an additional 5 per centum of the appraised price within five years from the date of said agreement.

f. Payment of the remaining unpaid balance of the appraised price within six years from the date of said agreement.

Interest shall be paid on the appraised price and unpaid balance of the appraised price yearly as it accrues at the rate of 1 per centum per annum and all taxes shall be paid by the debtor.

The proceeds of such payments on the appraised price and interest shall be paid to the lien holders as their interests may appear, and to the trustee of the unsecured creditors, as their interests may appear, if a trustee is appointed.

(4) An agreement having been reached as provided in subsection (3), the debtor may consume or dispose of any part or parcel or all of said property whether covered by the general lien to the trustee, if a trustee is appointed, or subject to pledges or prior liens or encumbrances held by secured creditors, provided he pays the appraised value of such part or parcel or all, as the case may be, to the secured creditors, as their interests may appear, and the trustee of the unsecured creditors, as his interests may appear, if a trustee is appointed, or he may put up a bond approved by the referee in bankruptcy that he will make payments, as provided for herein, of any property so consumed or disposed of.

(5) In case the debtor fails to make any payments, as herein provided, to any or all of the secured creditors or to the trustee of the unsecured creditors, then such secured creditors or the trustee may proceed to enforce their pledge, lien, or encumbrances in accordance with law. It shall be the duty of the secured creditors and of the trustee of the unsecured creditors to discharge all liens of record in accordance with law, whenever the debtor has paid the appraised value of any part, parcel or all of his property as herein provided.

(6) Having complied with the provisions of subsection (3), the debtor may apply for his discharge as provided in this Act.

(7) If any secured creditor of the debtor, affected thereby, shall file written objections to the manner of payments and distribution of debtor's property as herein provided for, then the court, after having set aside the debtor's exemptions as prescribed by the State law, shall stay all proceedings for a period of five years, during which five years the debtor shall retain possession of all or any part of his property, under the control of the court, provided he pays a reasonable rental annually for that part of the property of which he retains possession; the first payment of such rental to be made within six months of the date of the order staying proceedings, such rental to be distributed among the secured and unsecured creditors, as their interests may appear, under the provisions of this Act. At the end of five years, or prior thereto, the debtor may pay into court the appraised price of the property of which he retains possession: *Provided*, That upon request of any lien holder on real estate the court shall cause a reappraisal of such real estate and the debtor may then pay the reappraised price, if acceptable to the lien holder, into the court, otherwise the original appraisal price shall be paid into court and thereupon the court shall, by an order, turn over full possession and title of said property to the debtor and he may apply for his discharge as provided for by this Act: *Provided, however*, That the provisions of this Act shall apply only to debts existing at the time this Act becomes effective.

If the debtor fails to comply with the provisions of this subsection the court may order the trustee to sell the property as provided in this Act.

ceedings were instituted by the bank in the State Court, the debtor having defaulted on several installments of principal and interest and also on his obligation to pay the taxes and to keep the mortgaged property insured, and on June 30, 1934, a decree of foreclosure was entered and the property ordered sold. The amended petition herein was filed after the entry of the decree of foreclosure, but before a sale thereunder.

The Louisville Joint Stock Land Bank intervened in this proceeding by answer, challenging the constitutionality of the Frazier-Lemke Act, and this is the sole issue for decision. The bank insists:

(1) That the Frazier-Lemke Act does not deal with the subject of bankruptcies, or with any subject over which Congress is given legislative power by the Constitution.

(2) That the Act deprives creditors of their property without due process of law, in violation of the fifth Amendment to the Constitution of the United States.

(3) That, as applied to this proceeding, the Act denies full faith and credit to a judgment of a Kentucky Court of competent jurisdiction, in violation of Section 1 of Article IV of the Constitution.

The power of Congress to enact this legislation, if such power exists, can only be found in that provision of Clause 4, Section 8, Article 1 of the Constitution which empowers Congress "to establish uniform laws on the subject of bankruptcies throughout the United States." If the Act, when read in connection with the National Bankruptcy Act of 1898, as from time to time amended, and of which it is a part, is not one on the subject of bankruptcies within the meaning of the Constitution, then it can not be sustained.

Undoubtedly, the Constitution vests in Congress the power to pass laws which are territorially uniform, dealing with the relation of creditor and debtor, when the debtor is unable or unwilling to discharge his indebtedness in full. Whatever once may have been the doubt of courts and law writers as to the scope of the phrase "laws on the subject of bankruptcies," as used in the Constitution, it is now settled that this power of Congress is not limited nor circumscribed by the English bankruptcy acts in force at the time of the adoption of the Constitution. Probably the best definition which has ever been given of its scope is found in the discussion of the subject by Mr. Justice Catron in the case of *In Re Klein*, decided in the Circuit Court for the District of Missouri, Federal Case No. 7865, and also

reported in a note to Nelson v. Carland, 1 How. 265, at page 277. He said:

> "It extends to all cases where the law causes to be distributed the property of the debtor among his creditors; this is its least limit. Its greatest is the discharge of a debtor from his contracts. And all intermediate legislation, affecting substance and form, but tending to further the great end of the subject—distribution and discharge—are in the competency and discretion of Congress."

This language was quoted with approval in the case of *Hanover National Bank* v. *Moyses*, 186 U. S. 181, in which the court held that the permissible scope of bankruptcy laws under the Federal Constitution is much broader than had been the scope of the English laws on the subject prior to the adoption of the Constitution. That case holds that the subject of bankruptcies under the Constitution includes not only the power to provide for a distribution of the property of the debtor among his creditors, but also the power to provide for a discharge of the debtor from his debts and legal liabilities, and that therefore the power conferred upon Congress by this provision of the Constitution involves the power to impair the obligation of contracts. It also holds that Congress possesses the power to make bankruptcy laws available to debtors, as well as to creditors. Therefore, the bankruptcy provision of the Constitution can not be regarded as a power conferred upon Congress to be exercised solely for the benefit of creditors. Subject to the requirement of uniformity, it is a grant of plenary power over the subject of bankruptcies, and while, of course, Congress, under the pretext of executing this power, can not pass laws dealing with matters not entrusted to the National Government,—*Hammer* v. *Dagenhart*, 247 U. S. 251, *Child Labor Case*, 259 U. S. 20,—yet so long as the legislation is fairly within the constitutional grant, the public policy exemplified therein is exclusively within congressional discretion. Consideration may be given to the rights both of creditors and of distressed debtors, provided only that the consideration extended to either class is not so unjust or arbitrary as to violate fundamental principles of justice or to smack of collusion between the law-making body and the favored class.

A fundamental essential of all bankruptcy laws under the Constitution is the reasonably prompt distribu-

tion among his creditors of the value of the property of the debtor unable or unwilling to pay his debts; but I can not believe that this necessarily requires a sale of the bankrupt's property under competitive bidding. If the law provides for a realization of the fair value of the debtor's property by some other method than by such a sale, and for a distribution among the creditors according to their rights of the sum thus ascertained, the same general purpose is accomplished as would be accomplished by a sale, and therefore it seems to me entirely within the competency of Congress to provide for a determination of the value of the debtor's property subject to distribution by some other method than by a sale under competitive bidding. Hence, there is no constitutional impediment against Congress providing that in a bankruptcy proceeding the actual fair value of the debtor's property subject to distribution shall be ascertained by appraisers appointed by the court, such appraisal to be made under the supervision and subject to the control of the court; nor to prevent Congress from designating the order of priority in which interested parties may be permitted to elect to pay the appraisal price and take the property. Furthermore, there can be no doubt that Congress can validly provide for the payment of this appraisal value within such a reasonable time, or in such installments over such a reasonable time, as it may determine; and it is entirely within the power of Congress to provide that the deferred payments shall not bear interest. Again, there can be no doubt of the power of Congress to require all of the bankrupt's property, including that covered by mortgages or other encumbrances, to be administered in the bankruptcy court, free from the interference of State tribunals; otherwise, the Constitution of the United States and the laws passed in pursuance thereof would not be the supreme law of the land, as they are declared to be in Clause 2 of Article VI of the Constitution.

Measured by these principles, it seems to me that the Act in question deals only with matters within the competency of Congress under the bankruptcy provision of the Constitution. It provides for adjudicating the debtor a bankrupt, and subjects all of his property to the control of the bankruptcy court. It provides for the distribution among his creditors, according to their respective rights, of the value of all of the debtor's property which is subject to his debts. It provides that this value shall be determined by an appraisal, but it is care-

ful to set up ample safeguards against either over-appraisal or under-appraisal of the property. The appraisers are not bound by the market price at the time of the appraisal, but under the Act are free to take into consideration all relevant factors in determining the true value of the property. The right of objections, exceptions and appeal is made available to interested parties. I do not agree with the contention of the bank that the right of court review is granted only as to appraisals of real estate. The Act, in part, provides:

> "The appraisals shall be made in all other respects, with right of objections, exceptions and appeal, in accordance with this Act: Provided, That in case of real estate either party may file objections, exceptions and appeals within one year from the date of order approving the appraisal."

If the only right of court review of appraisals is of appraisals of real estate, then that part of the quoted language preceding the word "provided" is entirely meaningless. The meaning of the quoted language becomes perfectly apparent, however, when we keep in mind the fact that the Frazier-Lemke Act is, as its title declares, "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and Acts amendatory thereof and supplementary thereto." The amendment is, of course, an integral part of the Bankruptcy Act of July 1, 1898, as from time to time amended, and the "right of objections, exceptions and appeal in accordance with this Act," preserved to interested parties, necessarily means such rights as are found in the Bankruptcy Act in its entirety, and that Act as a whole makes ample provision for such court review. No other meaning can possibly be given to the language used, because the Frazier-Lemke Act itself contains no further reference to the right of objections, exceptions and appeal. The language referred to was intended by Congress to have some meaning. Therefore, reading the quoted language with the thought of giving effect to all the words, it seems perfectly plain to me that interested parties may file with the referee objections to the appraisal of any character of property of the debtor, and, if dissatisfied with the ruling of the referee, may file a petition for review by the District Judge, and, if dissatisfied with his action, have same reviewed by the Appellate Court, to the extent that the general bank-

ruptcy act authorizes such review. All of these proceedings questioning the appraisal, according to the plain language of the Act, must be had in the manner prescribed in the general bankruptcy act, and as to all property other than real estate, within the time prescribed by the provisions of that act. As to real estate, the objections, exceptions and appeal may be taken at any time within one year from the date of the order of the referee approving the appraisal. My conclusion that the words "this Act," found in the quoted language, refer to the bankruptcy act in its entirety is re-enforced by the language of Subsection 6, which provides: "Having complied with the provisions of Subsection 3, the debtor may apply for his discharge as provided in this Act"; and by that part of Subsection 7 which provides that after the debtor has complied with its provisions "he may apply for his discharge as provided in this Act"; and by the language of the last sentence of Subsection 7 which reads: "If the debtor fails to comply with the provisions of this subsection the court may order the trustee to sell the property as provided in this Act." As the Frazier-Lemke Act sets out no method by which the debtor may apply for his discharge, nor for the sale of the debtor's property, the language just quoted would have no meaning whatever unless the words "this Act," therein used, refer to the bankruptcy act in its entirety, of which the Frazier-Lemke Act is a part. Hence, the words "this Act," found in Subsections 6 and 7 above referred to and in the provision dealing with appraisals, necessarily refer to the bankruptcy act as a whole. Thus construed, I have no doubt that the method of determining the value of the property of the debtor subject to distribution among his creditors is one fairly calculated to secure for the creditors the full and fair value thereof.

The Act gives to the debtor the sole right to become the purchaser of any part of the property from the trustee at the appraised value thereof, and to pay for same in installments extending over a period of six years, with interest at one per cent; but this right is predicated upon the consent of the lien holders. The fact that the consent of the general creditors and of the trustee is not required can not be taken advantage of by the bank in this case, as it is not a general creditor except as to the excess of its debt over the appraisal value of the property in lien to it; but in my judgment this provision of the Act would be valid even though the consent of no class of creditors were required, provided the terms of

the payment of the appraisal value fixed in Subsection 3 of the Act are not so unreasonable as against creditors as to violate one of the fundamental essentials of bankruptcy acts, viz., the distribution to creditors, within a reasonable time, of the value of the property of the bankrupt subject to distribution; but this question will be discussed later in the opinion in connection with my discussion of Subsection 7. As heretofore indicated, appraisal of the property of the debtor under the safeguards contained in the Act is fairly calculated to secure for creditors a full and fair value of the property. If this is done, no creditor has the right to complain because the debtor is given the sole right to become the purchaser at this price. In bankruptcy proceedings the holder of a lien on property certainly has no constitutional right to demand that he be allowed to become the purchaser of the property covered by his lien. If he is allowed to realize on this property the full value thereof for application to his lien debt, no right of his has been violated. Indeed, I know of no constitutional inhibition against State laws providing that in foreclosure proceedings under State law the value of encumbered property shall be determined by an appraisal under proper safeguards to protect the interest of the lienholder, and giving the debtor the prior right to become the purchaser of the encumbered property at the appraisal price.

Counsel for the bank advanced the suggestion that those provisions of the Act, permitting the debtor to become the purchaser of his property at its appraisal value under the terms therein stated, is, in effect, a composition with his creditors, and therefore do not relate to the subject of bankruptcies within the constitutional sense. I do not think this contention is sound. In the first place, those provisions of the Act are not the equivalent of a composition, because a composition settlement with creditors may or may not result in the distribution of the entire value of the debtor's property to his creditors. His creditors may agree to a composition settlement which will result in the payment of less money than the full value of his property; and if approved by the court, under the present bankruptcy law, the bankrupt is entitled to be repossessed of his property and discharged of his debts, provided he has made a full disclosure of his property and has been guilty of no fraud in connection with the composition settlement. The provisions of the Act referred to, however, when fairly construed, require the debtor, if he takes over

the property under its terms, to pay the full fair value of same as determined by an appraisal under the terms of the Act. Even should those provisions of the Act, however, be construed as the equivalent of a composition settlement, such a construction would not make the Act unconstitutional. Provision for a composition settlement by a bankrupt with his creditors and for revesting him with title to his property and for his discharge upon approval and execution of such settlement, was contained in the Bankruptcy Act of 1874 (18 Statutes at Large, 182), and this provision was held by Circuit Justice Hunt to be a valid exercise of the power of Congress under the bankruptcy clause of the Constitution in the case of *In Re Reiman*, Federal Case No. 11,675. Again, in the case of *Wilmot* v. *Mudge*, 103 U. S. 217, it was held at page 219 that a proceeding under the composition provision of the Bankruptcy Act of 1874 was a proceeding in bankruptcy under that bankruptcy act, and the clear import of that decision is that Congress has the power under the bankruptcy provision of the Constitution to provide for composition settlements in bankruptcy proceedings and for the discharge of the bankrupt after such composition settlement has been approved and complied with. The present bankruptcy act (Section 12) contains a composition provision, and while I know of no case directly upholding its constitutionality, I think such is the necessary deduction to be drawn from the cases of *Cumberland Glass Manufacturing Co.* v. *DeWitt & Co.*, 237 U. S. 447; *Nassau Smelting & Refining Works* v. *Brightwood Bronze Foundry Co.*, 265 U. S. 269, and *Myers* v. *International Trust Co.*, 273 U. S. 380. It is true each of these cases points out that a composition settlement in a certain sense is a substitute for bankruptcy proceedings, as such proceedings are required to be conducted under the Act of 1898; but they each recognize, inferentially at least, the propriety of the inclusion in a bankruptcy statute of a provision for the composition of debts and for a discharge and restoration of the title and possession of the debtor when such composition has been approved and effected. Composition settlements, as authorized by the present Bankruptcy Act, can be sustained on the idea that the sum paid under such a settlement fairly approximates the value of the debtor's property. Before the creditors are called upon to act upon the debtor's proposition of composition, he must submit himself to an examination in open court or at a meeting of his creditors, and file a full schedule of his

property and of his liabilities. It can not be presumed that with this means of informing themselves, the creditors, or a majority of them, would consent to a settlement which would result in securing for themselves a substantially less sum than the fair value of the debtor's property. Such a composition settlement, therefore, substantially accomplishes what is required in all bankruptcy statutes, viz., a distribution of the value of the bankrupt's property among his creditors.

It is contended by counsel for the bank that the Act requires a reduction of the claims of creditors, whether they consent to such reduction or not. Such a conclusion can only result from a superficial consideration of the Act. As I read it, the Act nowhere requires any such scaling down of debts. It devotes the fair value of the entire property of the debtor, other than his exemptions, to the payment of the claims of his creditors. As to secured claims, if the appraisal value of the pledged property is less than the amount of the secured debt, the deficiency, including interest, can be proven as a general claim and participate in the distribution of the appraisal value of the unencumbered property ratably with the other unsecured claims. Of course, when the value of the bankrupt's estate is not sufficient to pay his debts in full, the practical effect of a discharge is to reduce the claims of creditors, but such is the effect of a discharge under any bankruptcy law.

Those provisions of the Act found in Subsections 3, 4, 5 and 6 which I have been discussing, of course, are never called into play except upon request of the debtor, and then only with the consent of the lien holder. If the debtor does not request the privilege of purchasing the property at its appraised value, then I think it clear from the entire Act that the property must be administered under the provisions of the bankruptcy act applicable in ordinary bankruptcy proceedings. Having made his request to purchase, however, and met with refusal or objection by secured creditors, Subsection 7 of the Act provides that the court, after setting aside the debtor's exemptions as prescribed by State law—

> ". . . shall stay all proceedings for a period of five years, during which five years the debtor shall retain possession of all or any part of his property, under the control of the court, provided he pays a reasonable rental annually for that part of the property of which he retains possession, the first pay-

ment of such rental to be made within six months of the date of the order staying proceedings, such rental to be distributed among the secured and unsecured creditors, as their interests may appear, under the provisions of this Act. At the end of five years, or prior thereto, the debtor may pay into court the appraised price of the property of which he retains possession: Provided, That upon request of any lien holder on real estate the court shall cause a reappraisal of such real estate and the debtor may then pay the reappraised price, if acceptable to the lien holder, into the court, otherwise the original appraisal price shall be paid into court and thereupon the court shall, by an order, turn over full possession and title of said property to the debtor and he may apply for his discharge as provided for by this Act: Provided, however, that the provisions of this Act shall apply only to debts existing at the time this Act becomes effective.

"If the debtor fails to comply with the provisions of this subsection the court may order the trustee to sell the property as provided in this Act."

This subsection postpones the right of sale of the debtor's property for five years, with the privilege to the debtor during that time to occupy and use same, provided he pays a reasonable rental therefor, and to become the purchaser thereof at any time during that period, as therein provided. Certainly Congress has the power to prohibit the sale of the assets of a bankrupt for a reasonable length of time after the court takes possession of same, and to authorize the trustee or other representative of the creditors, or officer of the court, to rent same during the waiting period. If it possesses this power, why may not Congress authorize the property to be rented to the debtor? Possessing the power to delay the sale of a bankrupt's assets, and to authorize the rental thereof in the meanwhile to the debtor, why may not Congress also provide that at the end of the waiting period, or prior thereto, the debtor may become the purchaser of the property by paying in cash the appraisal value thereof? Frankly, I can see no constitutional impediment to such legislation on the part of Congress, if that body deems it in the furtherance of sound public policy.

The Act is careful to make provision to protect the creditors, in event real estate increases in value after

the appraisal made under Subsection 1 and before the debtor exercises his option to purchase under Subsection 7. It provides that at the request of any lien holder on real estate the court shall cause a reappraisal of such real estate, and the debtor, if he desires to take over the property, must pay the reappraisal price, if acceptable to the objecting lien holder, or otherwise he must pay the original appraisal price. Of course, this simply means that if he desires to avail himself of the right to purchase the property under Subsection 7, the debtor must pay the original appraisal price or the reappraisal price, whichever is the greater.

I think the bank is in error in its contention that no provision is made for the reappraisal of unencumbered real estate. The reappraisal provision must be read in the light of that provision found in Subsection 2, which declares that the property of which the debtor retains possession, under the control of the court, shall be subject to a general lien as security for the payment of the value thereof to the trustee of the creditors, if a trustee is appointed, such lien to be subject to and inferior to all prior liens, pledges or encumbrances. Thus, when the debtor takes possession of his property under Subsection 2, the law not only continues in force the liens then against same, but also places it in lien to the trustee for the benefit of all creditors. Therefore, the trustee is undoubtedly a lien holder within the meaning of the reappraisal provision of Subsection 7. He is such a lien holder, not only on encumbered real estate of the debtor, but on the unencumbered real estate as well, and, being such a lien holder, he is granted the right to demand a reappraisal of the real estate of the debtor before the debtor can become a purchaser thereof under Subsection 7. It is true the Act makes no provision for the reappraisal of personal property, but I can not see that this fact affects the validity of the Act. Indeed, I do not think the validity of the Act would be affected had it made no provision for the reappraisal of any of the property. I do not doubt the power of Congress to provide that one appraisal made at the beginning of the proceedings by impartial appraisers, free to give consideration to all relevant factors of value, with right of judicial review, shall be binding upon all interested parties.

I am not impressed with the contention of the bank that the waiting period of five years, provided for in Subsection 7, cancels all interest on its mortgage which

would otherwise accrue during that period. Such is not the necessary effect of the Act, although it may be its incidental effect. It cancels no interest; the debt continues to draw interest. As a matter of fact, if at the date of the original appraisal the value of the property in lien is not sufficient to pay the principal debt and interest but during the waiting period so increases in value that on a reappraisal it will satisfy the principal and interest the lien creditor has been the gainer. On the other hand, of course, if the property has not increased in value, the creditor has lost interest on the principal sum during the waiting period. Such might easily be the effect, however, of any law which permits property sold under foreclosure to be sold on time without interest on deferred payments. The Act provides that during the waiting period the debtor may occupy and use the property only upon condition that he pays a reasonable annual rental, which shall be distributed to the creditors according to their rights in the property. Under this provision the court is not required to fix the annual rental at one time, and in advance, for the entire five year period, but the rental may be adjusted annually. Furthermore, inasmuch as the debtor holds the property subject to the control of the court, I have no doubt that the court is authorized under the Act to require, not only such security for the payment of the rent, but for the upkeep and protection of the property, as in its judgment may be deemed to the interest of creditors and fair to the debtor. Even if it be conceded that Congress can not validly provide for a waiting period without making provision for the probable loss of interest to the creditors during such waiting period, it seems to me that Congress might reasonably assume that on the whole the provision for the payment of rental, coupled with the power of the court to prevent waste and to require upkeep, would compensate for the loss of interest. Certainly there is no proof that such would not be the result in this case.

It is true that at the end of the waiting period of five years the debtor may decide not to take the property, in which event the trustee is required under the Act to sell it in accordance with the provisions of the general bankruptcy act; but I can not see that this provision renders the Act invalid. We have already seen that Congress may properly provide for a reasonable waiting period before the sale of property in bankruptcy proceedings, and authorize its rental during such period.

If the debtor decides not to take the property at the end of the waiting period, then the result of the proceedings under Subsection 7 in such a case is substantially the same as if the Act had simply prohibited the sale of the property for five years from the date of adjudication and authorized the rental of it during that period of time.

Is the waiting period of five years such an unreasonable delay in the distribution of the property of the bankrupt to his creditors as to amount to a denial of due process? It seems to me that this resolves itself into the question of whether such a period of delay substantially denies to the creditors the right of a distribution of the bankrupt's assets. It must be accepted that it was the judgment of Congress that it does not, and this judgment must be weighed in the light of the conditions confronting Congress when the law was enacted. Courts may take judicial notice of universally recognized facts. At the time this legislation was enacted the Nation was going through the severest financial depression in its entire history. Values of all property, and particularly of farm property, had not only sunk to unprecedented levels, but there was no market for it even at these levels. In legislating on matters committed to it by the Constitution, Congress undoubtedly may give thought to public policy and the general welfare. Within the scope of its delegated powers it may legislate for the general welfare, just as States may do under their police power. *The Lottery Case*, 188 U. S. 321; *Hipolite Egg Co.* v. *United States*, 220 U. S. 45; *Caminetti* v. *United States*, 242 U. S. 470. Unquestionably, it is desirable that the sacrifice of farm property and the dispossession of farmers shall be avoided, so far as constitutionally may be done with fairness to others, during an emergency such as now prevails. It was the judgment of Congress that through the medium of bankruptcy proceedings the farmer should be given five years within which to rehabilitate himself and save his property. Discretion on this subject, within constitutional bounds, rests with Congress, and I am not prepared to say that these bounds have been exceeded in the legislation under consideration.

It seems to me that the claim of the bank that the Act violates Section 1 of Article IV of the Constitution, in that it denies full faith and credit to the judgment of the Kentucky Court decreeing foreclosure of its mortgage, is entirely without merit. There is withdrawn from the State Court only the power to enforce

this judgment. The power of Congress under the bankruptcy clause to administer on and distribute all of a bankrupt's property necessarily embraces the power to halt State Court proceedings against the bankrupt's property, where those proceedings have not resulted in divesting the bankrupt of his title and vesting it in a purchaser for value. The present general bankruptcy act (Section 67) provides that all levies, judgments, attachments or other liens obtained through legal proceedings against a person who is insolvent at any time within four months prior to the filing of a petition in bankruptcy against him shall be deemed null and void, in case he is adjudged a bankrupt, and that the property affected by the levy, judgment, attachment or other lien shall be deemed wholly discharged and released from the same, unless the bankruptcy court shall order same to be preserved for the benefit of the bankrupt's estate. This provision of the statute has been invoked literally thousands of times to set aside judgment liens not based on contracts, and no court, so far as I am advised, has ever held that the statute violates the full faith and credit clause of the Constitution. It can not be doubted that a discharge in bankruptcy applies to judgments, as well as to claims which have not been reduced to judgment. To limit the power of Congress under the bankruptcy provision of the Constitution by such a construction of the full faith and credit clause as is contended for here would not only render it practically impossible for Congress to pass any bankruptcy law extending to debtors the right of discharge, but in many cases would make it possible for a vigilant creditor, by State Court proceedings, to secure an undue proportion of the bankrupt's estate.

Counsel for the bank suggest, but I do not understand that they seriously contend, that the Act, because it applies only to farmers and to debts existing at the time it became effective, is not uniform, as is required by the bankruptcy clause of the Constitution. Uniformity, as required by this provision of the Constitution, means territorial uniformity—not uniformity as between persons or classes of persons. *Hanover National Bank* v. *Moyses*, 186 U. S. 181; *Leidigh Carriage Co.* v. *Stengel*, 95 Fed. 637 (6th Cir.). The Act meets this test of uniformity.

For me this case has been one of unusual difficulty. I approached its consideration with a very definite conviction of its unconstitutionality. Frankly, I regret that on more mature deliberation I can not conscientiously

adhere to that view. I consider the legislation, in some of its provisions, unfair to creditors and unwise even as to farmer debtors, for it inevitably closes to them all private sources of long-time credit. These matters, however, involve questions of policy, which address themselves to Congress—not to the courts.

An order conforming to the views here expressed may be prepared and presented for entry.

CHAS. I. DAWSON,
Judge.

PETITION—Filed Nov. 30, 1934.

The bankrupt, William W. Radford, Sr., hereby petitions the Court that all of his property, whether pledged, encumbered or unencumbered by liens or otherwise, be appraised, and that his exemptions as prescribed by the law of the State of Kentucky, subject to any liens thereon, be set aside, and that he be allowed to retain possession of any part or parcel, or all of the remainder, of his property, and pay for the same under the terms and conditions set forth under Sub-section (s) of Section 75 of the Bankruptcy Act.

Frank Rives,
David A. Sachs, Jr.,
Edwin A. Krauthoff,
Attorneys for William W. Radford, Sr., Bankrupt.

ORDER—Entered November 30, 1934.

At Louisville, in said Western District of Kentucky on November 30, 1934, before the undersigned Referee in Bankruptcy.

At a regular first meeting of creditors this day held, ten days notice thereof having been given to all scheduled creditors and parties in interest, and appearing William W. Radford, Sr., the bankrupt herein and being duly sworn according to law was examined in open Court by the Referee and counsel for parties in interest.

And thereupon said Radford filed a petition which is in words and figures as follows, to wit:

> The bankrupt, William W. Radford, Sr., hereby petitions the Court that all of his property, whether pledged, encumbered or unencumbered by liens or otherwise, be appraised, and that his exemptions as prescribed by the law of the State of Kentucky, subject to any liens thereon, be set aside, and that he be allowed to retain possession of any part or parcel, or all of the remainder, of his property, and pay for the same under the terms and conditions set forth under Sub-section (S) of Section 75 of the Bankruptcy Act.

And the Referee being advised, it is ordered that L. J. Harris, Fred Jackson and Lucian A. Moseley of Christian County, Kentucky, be, and hereby they are, designated and appointed as appraisers to appraise all of the property, whether pledged, encumbered or unencumbered, of the bankrupt, William W. Radford, Sr., and they are hereby ordered and directed to appraise all the property of the said William W. Radford, Sr., at its then fair and reasonable value, not necessarily the market value, at the time of such appraisal, and make report of such appraisal with all convenient speed back to this Court, to all of which Louisville Joint Stock Land Bank objects and excepts.

And thereupon it is ordered by the Court that this meeting be, and it is adjourned to 9:30 o'clock A. M. at the office of the undersigned Referee, 223 Federal Building, Louisville, Kentucky, on December 1, 1934, for all general purposes of the estate.

AFFIDAVIT—Filed Dec. 1, 1934.

The affiants, L. J. Harris, Fred Jackson and Lucian Moseley, being duly sworn upon their oaths state that they will well and truly appraise all of the property of the debtor, William W. Radford, Sr., consisting of the personal property of the said debtor not exempt to him, and the real estate owned by the debtor in Christian County, which is subject to a mortgage to Louisville Joint Stock Land Bank, at its fair and reasonable value, but shall not necessarily be its present market value, and any other property discovered to us.

L. J. Harris,
Fred Jackson,
Lucian Moseley.

Subscribed and sworn to before me by L. J. Harris, Fred Jackson and Lucian Moseley, on this the 30th day of November, 1934. My commission expires the 27th day of July, 1935.

Hattie C. Wood,
Notary Public Christian
County, Ky.

(Seal)

REPORT OF APPRAISERS—Filed Dec. 1, 1934.

We, the undersigned appraisers, upon our oaths taken heretofore, do hereby appraise a fair and reasonable value of the property of the bankrupt, William W. Radford, Sr.

We fix the appraised value of the tract of land situated just South of Howell, Kentucky, on both sides of the Palmyra Road, containing 140 acres more or less, at.....$4,200.00

The 24½ acres of woodland, about two miles South of said tract, at..... 245.00

We appraised the one-half interest of said debtor in a lot of about one-half an acre, with a small house on same, between Howell and said farm, same owned jointly by debtor and Mrs. W. A. Haynes, at..... 150.00

We appraised and set aside to the debtor the following property, to-wit:

Household and kitchen furniture.....	$175.00
Two mules	160.00
One Wagon	35.00
One-half interest in four jersey cows....	40.00
One-half interest in four calves.....	10.00
Harness for mules	10.00
Two plows	10.00
Twenty bushels of corn for bread stuff for family	12.00
One-half interest in four fattening hogs	20.00
One hundred bushels of corn for feed for stock	60.00
One-half interest in four tons of hay....	36.00
Making total set aside to him as exempt.	$568.00

We appraised the balance of the personal property as follows, to-wit:

One-half interest in twelve cows.....	$120.00
One-half interest in eight calves.....	10.00
One-half interest in eight sows.....	30.00
One-half interest in fourteen hogs.....	70.00
One-half interest in five pigs.....	7.50
One horse eighteen years old.....	25.00
One wagon	35.00
One-half interest in 7½ acres dark tob..	250.00
One-half interest in 1 acre of burley " ..	35.00
One-half interest in 380 bushels of corn.	114.00
One-half interest in 12 tons of hay.....	60.00
One-half interest in Case Tractor, plows, and disc, four years old.....	125.00
One binder, one mower, one plow.....	50.00
Making total personal property.....	$831.50

L. J. Harris,
Fred Jackson,
Lucian Moseley.

Order

Subscribed and sworn to before me by L. J. Harris, Fred Jackson and Lucian Moseley, on this the 30th day of November, 1934. My commission expires the 27th day of July, 1935.

Hattie C. Wood,
Notary Public Christian
County, Ky.

(Seal)

ORDER—Entered Dec. 1, 1934.

At Louisville, in said District, on December 1, 1934, before Nat C. Cureton, Referee in Bankruptcy.

At a regularly adjourned creditors' meeting this day held and appearing William W. Radford, Sr., the bankrupt, in person and by counsel and Louisville Joint Stock Land Bank by counsel and the Court being advised, it is hereby ordered that the report of the appraisers this day tendered be and the same is hereby filed and counsel for the bankrupt does hereby except to the said report of said appraisers for the reason that upon the face of the report it does not affirmatively appear that the reasonable value of the property as fixed by the appraisers is in excess of or is less than the market value of said property and does ask that said report of appraisers be returned for correction accordingly and said exceptions are thereupon overruled by the Court to which ruling the bankrupt excepts and files exceptions thereto. Louisville Joint Stock Land Bank by counsel excepts to said report, which exceptions are overruled by the Court.

And thereupon the Louisville Joint Stock Bank in open Court offered to pay for said property upon which it has a mortgage the following sums in cash:

1. $7,063.43 with interest thereon from March 1, 1932 at the rate of 6% per annum
2. $891.21 with interest thereon from September 1, 1932 at the rate of 6% per annum

the aggregate of which sums is the amount of its mortgage debt as set forth in its answer filed herein.

And thereupon the counsel for the bankrupt admitted that Louisville Joint Stock Land Bank has a valid lien on the mortgaged property for the amount so offered to be paid in cash and that under the law all money paid in by the bank in cash would be immediately returned in satisfaction of its mortgage debt, if such offer be accepted.

It appearing that L. J. Harris, one of the appraisers appointed by the Court is Master Commissioner of Christain Circuit Court and familiar with the value of real estate in Christain County; that Fred Jackson, one of the appraisers is County Tax Commissioner of Christain County and as such is familiar with the value of real estate in said County and that Lucian Mosely, one of the appraisers is a farmer, of Christian County and is familiar with the value of real estate in said County, the Court is of the opinion that the report of the appraisers filed herein be and the same is hereby approved and that the fair and reasonable value of the mortgaged property but not necessarily its market value is $4445.00 as fixed by the appraisers.

Thereupon counsel for the bankrupt moved the Court to return the appraisement to the appraisers with instruction to state separately the fair and reasonable value of the property and the real estate on which the bank has a mortgage and the market value of such real estate so that it might be determined whether the appraisement made by the appraisers was in excess of the market value of the property or less than the market value thereof and counsel having been heard, the Court overrules said motion.

Thereupon counsel for the bankrupt further moved the Court to continue this hearing to give counsel an opportunity to give testimony of the appraisers of their theory on which they made their appraisement herein, which motion is overruled. To all of which the counsel for the bankrupt excepts and objects. Louisville Joint Stock Land Bank objects to the fixing the fair and reasonable market value of said mortgaged property at $4445.00.

Thereupon it is ordered that this meeting for all general purposes of the estate be and the same is adjourned to December 18th 1934 at 9:30 o'clock A. M. in the office of the Referee, Louisville, Kentucky.

Nat C. Cureton,
Referee in Bankruptcy.

ORDER—Entered Dec. 1, 1934.

At Louisville in said District on December 1, 1934, at a regularly adjourned creditors' meeting held before the undersigned Referee in Bankruptcy, it appearing that all of the real estate of the debtor, William W. Radford, Sr., is mortgaged to Louisville Joint Stock Land Bank and, under the law of Kentucky, the debtor is entitled to no exemptions of real estate under such circumstances, and the Referee being advised, it is ordered as follows:

(1) The Debtor is not entitled to and shall not have any exemption of real estate, and hence no exemption of real estate is set aside to him.

(2) The following personal property is set aside to the Debtor as his exemptions as prescribed by the Kentucky law:

Household and kitchen furniture	$175.00
Two mules	160.00
One wagon	35.00
One-half interest in four jersey cows	40.00
One-half interest in four calves	10.00
Harness for mules	10.00
Two plows	10.00
Twenty bushels of corn for bread stuff for family	12.00
One-half interest in four fattening hogs	20.00
One hundred bushels of corn for feed for stock	60.00
One-half interest in four tons of hay	36.00
Making total set aside to him as exempt	$568.00

To all of which Louisville Joint Stock Land Bank objects and excepts.

Nat C. Cureton,
Referee in Bankruptcy.

ORDER—Entered Dec. 1, 1934.

At Louisville in said District on December 1, 1934, at a regularly adjourned creditors' meeting held before the undersigned Referee in Bankruptcy, the Referee being advised, it is hereby ordered that the possession, subject to the control of the Referee of the District Court of the United States for the Western District of Kentucky, of the following described property:

Those certain tracts of land of 93⅜ acres, 53 acres and 25 acres located 12 miles south of Hopkinsville on the Palmyra Road and more fully described as follows:

(1) On the east side of the Palmyra Road near Howell beginning at a stake or corner on the Palmyra Road; thence south 89 east 191¼ poles to a stake in Whitfield's old line; thence with said line south 1 west 106½ poles to a stake, formerly Mumford's corner; thence west 20 poles to a stake and pointers, Quarles corner; thence north 48½ west 47 poles to five small black oaks, another of Quarles' corners; thence with the Bell Station Road north 86½ west 138 poles to the Palmyra Road; thence with the center of said road north 3½ east 70 poles to the beginning, containing in all about 100 acres, more or less, but there is excepted from this conveyance 2 1/5 acres of land which was sold off of said tract on June 10, 1887, by deed from R. W. Henry, Special Commissioner, to the Louisville & Nashville Railroad Company, see Deed Book 73, page 46, Christian County Court Clerk's office; and there is further excepted and excluded from this conveyance a certain tract of land conveyed to W. A. Haynes, comprising about three acres at the southwest corner of same, said three acres being conveyed to said Haynes by two deeds, respectively, one from Willie Link and his wife by deed dated January 1, 1897, of record in Deed Book 107, page 282, and the other one of date April 7, 1893 from Hunter Wood, Master Commissioner, of record in deed book 85, page 193, in the office aforesaid; there is also excepted two acres of real estate at the northwest corner of said tract which was conveyed by W. W. Radford and wife to the trustee of the Olivet Baptist Church on October 2, 1905, by deed of record in Deed Book 110, page 226, office aforesaid; said tract of land with the exceptions deducted contains 93⅜

acres which it is intended that this mortgage shall cover and being the same land which was conveyed to W. W. Radford by deed from W. W. Link and Sallie E. Link, his wife, by deed dated August 27, 1897, of record in Deed Book 96, page 326, in the aforesaid office.

(2) Beginning at a stake in the Palmyra Road; thence with the center of said road south 3½ west 40½ poles to a stake in the road; thence with Quarles line north 89 west 208 poles to a post oak stump; Giles' corner; thence with Giles' line north 1 east 41 poles to a post oak in Giles' line; thence south 89 east 208 poles to the beginning, and containing 53 acres, more or less; and being the same real estate conveyed by W. W. Radford on August 8, 1895, by W. W. Link by deed duly of record in Deed Book 94, at page 60, this tract adjoining the home place of the said W. W. Radford.

(3) Lying and being on the edge of Flat Lick near Jesse Giles' old place beginning at a stone near Fleming's fence in his line; runs thence south 63½ west 129 poles to black oak in the edge of a glade with sassafras and post oak pointers; thence north 24 west 35 poles to a stake in the line between Radford and Giles with two hickories and post oak pointers; thence north 67 west 129 poles to a stake; thence south 24 east 31 poles to the beginning and containing 25 acres, and being the same land conveyed to W. W. Radford by E. C. Radford by deed of date December 28, 1904, and recorded in Deed Book 108, page 434, office aforesaid.

shall remain in William W. Radford, Sr., subject to a general lien, as security for the payment of the value thereof to the Trustee of the creditors, such lien to be subject to and inferior to all prior liens or encumbrances; to all of which Louisville Joint Stock Land Bank objects and excepts.

Nat C. Cureton,
Referee in Bankruptcy.

ORDER—Entered Dec. 1, 1934.

At a regularly adjourned creditors' meeting this day held, it appearing to the Court that it is necessary that a Trustee qualify herein, creditors being called upon to nominate a Trustee and failing so to do, it is ordered by the Court that H. M. Kessler be and he is now appointed Trustee herein and ordered and directed to execute a Trustee's bond in the su mof $500.00 with personal surety.

REQUEST OF DEBTOR—Filed Dec. 1, 1934.

The Bankrupt, William W. Radford, Sr. hereby requests the Trustee in Bankruptcy herein to agree to sell to William W. Radford, Sr., the following described property under the terms and conditions set forth in Subsection (s), paragraph 3 of Section 75 of the Bankruptcy Act:

Those certain tracts of land of 93⅜ acres, 53 acres and 25 acres located 12 miles south of Hopkinsville on the Palmyra Road and more fully described as follows:

(1) On the east side of the Palmyra Road near Howell beginning at a stake or corner on the Palmyra Road; thence south 89 east 191¼ poles to a stake in Whitfield's old line; thence with said line south 1 west 106½ poles to a stake, formerly Mumford's corner; thence west 20 poles to a stake and pointers, Quarles corner; thence north 48½ west 47 poles to five small black oaks, another of Quarles' corners; thence with the Bell Station Road north 86½ west 138 poles to the Palmyra Road; thence with the center of said road north 3½ east 70 poles to the beginning, containing in all about 100 acres,

more or less, but there is excepted from this conveyance 2 1/5 acres of land which was sold off of said tract on June 10, 1887, by deed from R. W. Henry, Special Commissioner, to the Louisville & Nashville Railroad Company, see Deed Book 73, page 46, Christian County Court Clerk's office; and there is further excepted and excluded from this conveyance a certain tract of land conveyed to W. A. Haynes, comprising about three acres at the southwest corner of same, said three acres being conveyed to said Haynes by two deeds, respectively, one from Willie Link and his wife by deed dated January 1, 1897, of record in Deed Book 107, page 282, and the other one of date April 7, 1893, from Hunter Wood, Master Commissioner, of record in deed book 85, page 193, in the office aforesaid; there is also excepted two acres of real estate at the northwest corner of said tract which was conveyed by W. W. Radford and wife to the trustee of the Olivet Baptist Church on October 2, 1905, by deed of record in Deed Book 110, page 226, office aforesaid; said tract of land with the exceptions deducted contains 93⅜ acres which it is intended that this mortgage shall cover and being the same land which was conveyed to W. W. Radford by deed from W. W. Link and Sallie E. Link, his wife, by deed dated August 27, 1897, of record in Deed Book 96, page 326, in the aforesaid office.

(2) Beginning at a stake in the Palmyra Road; thence with the center of said road south 3½ west 40½ poles to a stake in the road; thence with Quarles line north 89 west 208 poles to a post oak stump; Giles' corner; thence with Giles' line north 1 east 41 poles to a post oak in Giles' line; thence south 89 east 208 poles to the beginning, and containing 53 acres, more or less; and being the same real estate conveyed to W. W. Radford on August 8, 1895, by W. W. Link by deed duly of record in Deed Book 94, at page 60, this tract adjoining the home place of the said W. W. Radford.

(3) Lying and being on the edge of Flat Lick near Jesse Giles' old place beginning at a stone near Fleming's fence in his line; runs thence south 63½ west 129 poles to a black oak in the edge of a glade with sassafras and post oak pointers; thence north 24 west 35 poles to a stake in the line between Radford and Giles with two hickories and post oak pointers; thence north 67 west 129 poles to a stake;

thence south 24 east 31 poles to the beginning and containing 25 acres, and being the same land conveyed to W. W. Radford by E. C. Radford by deed of date December 28, 1904, and recorded in Deed Book 108, page 434, office aforesaid.

William W. Radford, Sr.

REFUSAL OF MORTGAGEE—Filed Dec. 1, 1934.

The Louisville Joint Stock Land Bank, creditor and mortgagee of William W. Radford, Sr., hereby refuses to give its consent as a lienholder of a lien upon the property of William W. Radford, Sr., described in his request to the Trustee filed herein to agree to sell to him the mortgaged property, and the Louisville Joint Stock Land Bank hereby files this its written objection to sueh sale and to the manner of payments and distribution of William W. Radford, Sr.'s, property as provided for in Subsection (s) of Section 75 of the Bankruptcy Act.

Louisville Joint Stock Land Bank,
By John E. Tarrant,
Counsel.

PETITION—Filed Dec. 1, 1934.

The bankrupt, William W. Radford, Sr., hereby represents that he has requested the Trustee in Bankruptcy to agree to sell to him the part of the bankrupt estate mortgaged to the Louisville Joint Stock Land Bank, at the value and upon the terms and conditions set forth in Subsection (s), Paragraph (3) of Section 75 of the Bankruptcy Act; that the lienholder, Louisville Joint Stock Land Bank, has refused to give its consent thereto, and as a secured creditor of said William W. Radford, Sr., it has filed written objections to the manner of payments and distribution of William W. Radford, Sr.'s, property as provided in said Subsection (s).

The bankrupt, William W. Radford, Sr., thereupon prays the Court to enter the necessary final orders or judgments, which shall provide that all proceedings by the Louisville Joint Stock Land Bank against William W. Radford, Sr., be stayed for a period of five years from this date; that during said five year period, William W. Radford, Sr., shall retain possession of that part of his property upon which the Louisville Joint Stock Land Bank holds a mortgage, and that the Referee or the Court shall fix a reasonable rental to be paid annually by said William W. Radford, Sr., for that part of the property of which he retains possession, to-wit: said property mortgaged to the Louisville Joint Stock Land Bank.

Frank Rives,
David A. Sachs, Jr.,
Edwin A. Krauthoff;
Counsel for William W. Radford, Sr.

ORDER—Entered Dec. 1, 1934.

At Louisville in said District on December 1, 1934, at a regularly adjourned creditors' meeting held before the undersigned Referee in Bankruptcy, this cause coming on to be heard, upon the request of William W. Radford, Sr., that the Trustee in Bankruptcy shall agree to sell to him a certain portion of the bankrupt estate, and the Louisville Joint Stock Land Bank as a lienholder and secured creditor of said bankrupt having refused its consent to the bankrupt's request, and having filed written objections to the manner of payments and distribution of the said bankrupt's property, as provided for in the Bankruptcy Act, and it being stipulated that the annual taxes and insurance premiums amount to $105.00, and the Court being advised, it is ordered, adjudged and decreed as follows, to-wit:

(1) That all proceedings against William W. Radford, Sr., for the enforcement of any lien against the following described property be, and the same hereby are, stayed for a period of five years from this date:

(2) That the Louisville Joint Stock Land Bank be, and hereby it is, enjoined and restrained from proceeding in this Court, or in any other Court, for a period of five years from this date, to enforce any lien which it has, or may have, against the following property of said William W. Radford, Sr.:

Those certain tracts of land of 93⅜ acres, 53 acres and 25 acres located 12 miles south of Hopkinsville on the Palmyra Road and more fully described as follows:

(1) On the east side of the Palmyra Road near Howell beginning at a stake or corner on the Palmyra Road; thence south 89 east 191¼ poles to a stake in Whitfield's old line; thence with said line south 1 west 106½ poles to a stake, formerly Mumford's corner; thence west 20 poles to a stake and pointers, Quarles corner; thence north 48½ west 47 poles to five small black oaks, another of Quarles' corners; thence with the Bell Station Road north 86½ west 138 poles to the Palmyra Road; thence with the center of said road north 3½ east 70 poles to the beginning, containing in all about 100 acres, more or less, but there is excepted from this conveyance 2 1/5 acres of land which was sold off of said tract on June 10, 1887, by deed from R. W. Henry, Special Commissioner, to the Louisville &

Nashville Railroad Company, see Deed Book 73, page 46, Christian County Court Clerk's office; and there is further excepted and excluded from this conveyance a certain tract of land conveyed to W. A. Haynes, comprising about three acres at the southwest corner of same, said three acres being conveyed to said Haynes by two deeds, respectively, one from Willie Link and his wife by deed dated January 1, 1897, of record in Deed Book 107, page 282, and the other one of date April 7, 1893, from Hunter Wood, Master Commissioner, of record in deed book 85, page 193, in the office aforesaid; there is also excepted two acres of real estate at the northwest corner of said tract which was conveyed by W. W. Radford and wife to the trustee of the Olivet Baptist Church on October 2, 1905, by deed of record in Deed Book 110, page 226, office aforesaid; said tract of land with the exceptions deducted contains 93⅜ acres which it is intended that this mortgage shall cover and being the same land which was conveyed to W. W. Radford by deed from W. W. Link and Sallie E. Link, his wife, by deed dated August 27, 1897, of record in Deed Book 96, page 326, in the aforesaid office.

(2) Beginning at a stake in the Palmyra Road; thence with the center of said road south 3½ west 40½ poles to a stake in the road; thence with Quarles line north 89 west 208 poles to a post oak stump; Giles' corner; thence with Giles' line north 1 east 41 poles to a post oak in Giles' line; thence south 89 east 208 poles to the beginning, and containing 53 acres, more or less; and being the same real estate conveyed to W. W. Radford on August 8, 1895, by W. W. Link by deed duly of record in Deed Book 94, at page 60, this tract adjoining the home place of the said W. W. Radford.

(3) Lying and being on the edge of Flat Lick near Jesse Giles' old place beginning at a stone near Fleming's fence in his line; runs thence south 63½ west 129 poles to a black oak in the edge of a glade with sassafras and post oak pointers; thence north 24 west 35 poles to a stake in the line between Radford and Giles with two hickories and post oak pointers; thence north 67 west 129 poles to a stake; thence south 24 east 31 poles to the beginning and containing 25 acres, and being the same land conveyed to W. W. Radford by E. C. Radford by deed

of date December 28, 1904, and recorded in Deed Book 108, page 434, office aforesaid:

(3) During a period of five years from this date, William W. Radford, Sr., shall retain possession of the above described property under the control of this Court, provided he pays $325 as a reasonable rental for the first year for the said property of which he retains possession, which sum is hereby fixed as a reasonable rental to be paid by him, for the 1st year and the payment of such rental shall be made to the Trustee of the bankrupt on or before the 1st day of May, 1935.

The payment of rental for each subsequent year to be fixed by the court and paid to the Trustee of the bankrupt herein; to all of which Louisville Joint Stock Land Bank objects and excepts.

Nat C. Cureton,
Referee in Bankruptcy.

PETITION FOR REVIEW OF REFEREE'S ORDERS

—Filed Dec. 1, 1934.

To the Honorable Nat C. Cureton, Referee in Bankruptcy:

Your petitioner, Louisville Joint Stock Land Bank, respectfully shows:

That your petitioner is a lien creditor of the estate herein in the sum of (1) Seven Thousand Sixty-three Dollars and Forty-three Cents ($7,063.43), together with interest thereon at the rate of six per cent (6%) per annum from March 1, 1932, until paid, less a credit of Nine Dollars and Fifty-five Cents ($9.55), and (2) Eight Hundred Ninety-one Dollars and Twenty-one Cents ($891.21), together with interest thereon at the rate of

six per cent (6%) per annum from September 1, 1932, until paid, for which sums your petitioner has asserted a claim in its answer heretofore filed herein.

That on November 30, 1934, and December 1, 1934, orders, copies of which are hereto annexed, were made and entered herein, which orders, and each of them, were and are erroneous in the following particulars, to-wit:

(1) The Court erroneously appointed appraisers herein and directed them to appraise all of the property of the bankrupt at its then fair and reasonable value, not necessarily the market value.

(2) The Court erroneously ordered that possession of the property mortgaged to the petitioner should remain in the bankrupt, subject to a general lien, as security for the payment of the value thereof to the Trustee of the creditors, such lien to be subject to and inferior to all prior liens and encumbrances.

(3) The Court erroneously ordered that all proceedings against the bankrupt for the enforcement of any lien against the property mortgaged to your petitioner be stayed for a period of five years from December 1, 1934.

(4) The Court erroneously ordered that your petitioner be enjoined and restrained and erroneously enjoined and restrained your petitioner from proceeding in this Court, or in any other Court, for a period of five years from December 1, 1934, to enforce its lien against the bankrupt's property mortgaged to it.

(5) The Court erroneously ordered that during a period of five years from December 1, 1934, the bankrupt should retain possession of the property mortgaged to your petitioner under the control of the Court, provided that he paid a rental of $325 as a reasonable rental for said property for the first year, and a rental to be fixed by the court for subsequent years.

(6) The Court erroneously fixed as a reasonable rental to be paid by the bankrupt for the property mortgaged to your petitioner the sum of $325 for the first year.

(7) Section 75 of the Bankruptcy Law under which said orders complained of were entered is unconstitutional because (1) it is not a law on the subject of bankruptcies and (2) it deprives your petitioner of its property without due process of law.

(8) The Court erroneously fixed the value of the bankrupt's property mortgaged to your petitioner at

$4,445, because said property has a reasonable market value in excess of said sum, and your petitioner has offered and hereby offers to pay for said property the full amount of its aforesaid mortgage indebtedness thereupon.

Wherefore, your petitioner, feeling aggrieved because of such orders, prays that the same may be reviewed as provided in the Bankruptcy Law and General Order XXVIII and otherwise.

Louisville Joint Stock Land Bank,
By John E. Tarrant,
Counsel.

Copies of all of the orders entered by the Referee on November 30, 1934, and December 1, 1934, and hereinbefore printed in full on pages 68 to 82 were attached to and made a part of the Louisville Joint Stock Land Bank's petition for review of the Referee's orders.

CERTIFICATE OF REFEREE CURETON ON PETITION FOR REVIEW—Filed Dec. 3, 1934.

To the Honorable Charles I. Dawson, District Judge:

I, Nat C. Cureton, the Referee in charge of this proceeding do hereby certify:

That, in the course of such proceeding, orders, copies of which are annexed to the petition hereinafter referred to, were made and entered on the 30th day of November, 1934 and 1st day of December, 1934.

That, on the 1st day of December, 1934, the Louisville Joint Stock Land Bank, a creditor herein, feeling aggrieved thereat, filed a petition for review, which was granted.

The question presented on this review is:

Certificate of Referee Cureton on Petition for Review

Did or did not the Referee err in entering the orders complained of by Louisville Joint Stock Land Bank?

I hand up herewith for the information of the Judge the following papers:

1. The petition on which this review is granted.
2. All other papers which appear pertinent to this review.

Respectfully certified,

Nat C. Cureton,
Referee in Bankruptcy.

The Referee certified to the Honorable Charles I. Dawson, Judge of the United States District Court for the Western District of Kentucky, Louisville Joint Stock Land Bank's petition for review which is hereinbefore printed on pages 82 to 84 and all of the orders and other papers which are hereinbefore printed in full on pages 68 to 82.

ORDER—Entered Dec. 4, 1934.

This cause coming on for hearing on the petition of the Louisville Joint Stock Land Bank for review of the orders of the Referee entered on November 30, 1934, and December 1, 1934,

(1) Appointing appraisers and directing them to appraise all of the property of the bankrupt at its then fair and reasonable value, not necessarily the market value; and

(2) Ordering that possession of the mortgaged property should remain in the bankrupt, subject to a general lien, as security for the payment of the value thereof to the Trustee of the creditors, such lien to be subject

to and inferior to all prior liens and encumbrances; and

(3) Ordering that all proceedings against the bankrupt for the enforcement of any lien against the mortgaged property be stayed for a period of five years from December 1, 1934; and

(4) Ordering that Louisville Joint Stock Land Bank be enjoined and restrained and enjoining and restraining Louisville Joint Stock Land Bank for proceeding in this Court, or any Court, for a period of five years from December 1, 1934, to enforce its lien against the bankrupt property mortgaged to it; and

(5) Ordering that during such period of five years from December 1, 1934, the bankrupt should retain possession of the mortgaged property under the control of the Court, provided that he pay a rental of Three Hundred Twenty-five Dollars ($325) for said property for the first year and a rental to be subsequently fixed by the Court for subsequent years; and

(6) Fixing as a reasonable rental value to be paid by the bankrupt for the mortgaged property the sum of Three Hundred Twenty-five Dollars ($325); and

(7) Holding Section 75 of the Bankruptcy Law constitutional; and

(8) Fixing the value of the bankrupt's mortgaged real estate at Four Thousand Four Hundred Forty-five Dollars ($4,445).

And the Court, being advised, is of the opinion that Section 75 of the Bankruptcy Act is constitutional and that said orders, and each of them, entered by the Referee are proper.

It is, therefore, ordered that the action of the Referee in entering each of the orders complained of be, and the same is, in all things approved and affirmed except that the Court permits the bankrupt to offer an amended report of the appraisers which is ordered filed and approved to all of which the Louisville Joint Stock Land Bank objects and excepts but said exception is not based on said amended report being filed before the Court and not before the Referee.

Chas. I. Dawson,
Judge.

AMENDED REPORT OF APPRAISERS—Filed Dec 4, 1934.

We, the undersigned appraisers, upon our oaths, do hereby appraise the fair and reasonable value of the property of the debtor, William W. Radford, Sr., as follows:

We fix the fair and reasonable value of the property of the debtor on which Louisville Joint Stock Land Bank has a mortgage, at, Forty-four hundred forty-five & no/100 ..... $4445.00

We fix the market value of said land at $4445.00

We appraised the one-half interest of said debtor in a lot of about one-half an acre, with a small house on same, between Howell and said farm, owned jointly by debtor and Mrs. W. A. Haynes, at 150.00

We appraised and set aside to debtor the following property, to-wit:

Household and kitchen furniture	175.00
Two mules	160.00
One Wagon	35.00
One-half interest in four jersey cows	40.00
One-half interest in four calves	10.00
Harness for mules	10.00
Two plows	10.00
Twenty bushels of corn for bread stuff for family	12.00
One-half interest in four fattening hogs.	20.00
One hundred bushels of corn for feed for stock	60.00
One-half interest in four tons of hay.	36.00
Making total set aside to him as exempt.	$568.00

We appraised the balance of the personal property as follows, to-wit:

One-half interest in twelve cows	120.00
One-half interest in eight calves	10.00
One-half interest in eight sows	30.00
One-half interest in fourteen hogs	70.00
One-half interest in five pigs	7.50
One horse, eighteen years old	25.00
One Wagon	35.00
One-half interest in 7½ acres dark tobacco	250.00

Amended Report of Appraisers

One-half interest in 1 acre of burley tob.	35.00
One-half interest in 380 bushels of corn.	114.00
One-half interest in 12 tons of hay.....	60.00
One-half interest in Case Tractor, plows, and disc, four years old.....	125.00
One binder, 1 mower, 1 plow.....	50.00
Making total personal property.....	$831.50

L. J. Harris,
Fred Jackson,
Lucian Moseley,
Appraisers.

PETITION FOR APPEAL—Filed Dec. 4, 1934.

Louisville Joint Stock Land Bank petitions the Court for an appeal to the United States Circuit Court of Appeals for the Sixth Circuit from the order entered herein on November 14, 1934, overruling the objections of Louisville Joint Stock Land Bank to this proceeding, adjudicating William W. Radford, Sr., a bankrupt, and referring the proceeding to Nat C. Cureton, Referee in Bankruptcy, for the reasons and in the particulars specified in the assignment of errors which is filed herewith and prays that its appeal may be allowed, that a transcript of the record, proceedings and papers on which the appeal was taken be duly authenticated and sent to the Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, and that said order be reversed in the particulars specified in said assignment of errors.

John E. Tarrant,
Counsel for Louisville Joint
Stock Land Bank.

ASSIGNMENT OF ERRORS—Filed Dec. 4, 1934.

Louisville Joint Stock Land Bank (hereinafter called the Bank) files this its assignment of errors herein and says that the Court erred in the following particulars, to-wit:

(1) The Court erred in overruling the objections of the Bank to this proceeding.

(2) The Court erred in adjudging William W. Radford, Sr., a bankrupt.

(3) The Court erred in referring this proceeding to Nat C. Cureton, the Referee in Bankruptcy, to take such proceedings as were authorized by the National Bankruptcy Act as amended by the Act of June 28, 1934.

(4) The Court erred in holding constitutional Section 75 of the National Bankruptcy Act.

(5) The Court erred in holding constitutional the amendment of June 28, 1934, to Section 75 of the National Bankruptcy Act, which amendment is the so-called Frazier-Lemke Act.

(6) The Court erred in holding the amendment of June 28, 1934, to Section 75 of the National Bankruptcy Act to be a law on the subject of bankruptcies, and not to be in violation of the Due Process Clause of the Fifth Amendment to the Federal Constitution.

John E. Tarrant,
Counsel for Louisville Joint
Stock Land Bank.

BOND.

Know All Men by These Presents that Louisville Joint Stock Land Bank as principal and Fidelity & Deposit Company of Maryland as surety are held and firmly bound unto William W. Radford, Sr., bankrupt, in the sum of Five Hundred Dollars ($500) to be paid to William W. Radford, Sr., bankrupt, to which payment

well and truly to be made we bind ourselves, our successors and assigns by these presents.

The condition of this obligation is such that whereas Louisville Joint Stock Land Bank has prosecuted an appeal to the United States Circuit Court of Appeals for the Sixth Circuit to revise an order entered on November 14, 1934, in the above styled cause by the District Court of the United States for the Western District of Kentucky.

Now, Therefore, if Louisville Joint Stock Land Bank shall prosecute its said appeal and effect and answer all damages and costs if it fails to make good its appeal, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

Executed this December 4, 1934.

Louisville Joint Stock Land Bank,
By J. C. Englehard,
Vice-President.

Fidelity & Deposit Company of Maryland,
By J. Morton Morris,
Vice-President and
Attorney-in-Fact.

Approved December 4, 1934.
Chas. I. Dawson,
Judge.

ORDER GRANTING AN APPEAL TO LOUISVILLE JOINT STOCK LAND BANK—Entered Dec. 4, 1934.

The lien creditor, Louisville Joint Stock Land Bank, having this day presented its petition for review, assignment of errors and an appeal bond in the penal sum of Five Hundred Dollars ($500) praying an appeal to the United States Circuit Court of Appeals for the Sixth Circuit from an order entered herein on November 14,

Order Granting an Appeal, Etc.

1934, in the particulars specified in its assignment of errors, and the Court being sufficiently advised

It is ordered that (1) the said bond be, and the same hereby is, approved, (2) the said assignment of errors and petition for an appeal be and are each filed and (3) the appeal of Louisville Joint Stock Land Bank to the United States Circuit Court of Appeals for the Sixth Circuit be, and the same hereby is, granted.

Chas. I. Dawson,
Judge.

STIPULATION—Filed Dec. 4, 1934.

To the Clerk of the United States District Court for the Western District of Kentucky.

Dear Sir:

The foregoing transcript of record for use in the United States Circuit Court of Appeals for the Sixth Circuit in the matter of William W. Radford, Sr., bankrupt, wherein the lien claimant, Louisville Joint Stock Land Bank, is appellant and the bankrupt, William W. Radford, Sr., is appellee, has been jointly prepared by counsel for Louisville Joint Stock Land Bank and William W. Radford, Sr., and this is your authority for treating the foregoing transcript of record as the record upon the appeal and for certifying it accordingly.

Issuance and service of citation are hereby waived.

John E. Tarrant,
Counsel for Louisville Joint Stock Land Bank, Appellant.

David A. Sachs, Jr.,
Frank Rives,
Edwin A. Krauthoff,
Counsel for William W. Radford, Sr., Appellee.

CLERK'S CERTIFICATE.

United States of America,
Western District of Kentucky. } ss.

I, Lilburn Phelps, Clerk of the District Court of the United States for the Western District of Kentucky, do hereby certify that the foregoing transcript of record consisting of 91 pages constitutes a full, true and complete transcript of the record and proceedings in said Court in the Matter of William W. Radford, Sr., Bankrupt, as the same appears of record and on file in my said office and pursuant to the stipulation of counsel filed herein.

Witness my hand and official seal of said Court this December 4, 1934.

Lilburn Phelps,
Clerk, United States District Court, Western District of Kentucky.

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SIXTH CIRCUIT.

In the Matter of

William W. Radford, Sr.,

Bankrupt.

PETITION TO SUPERINTEND AND REVISE BY APPEAL ORDERS OF THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY—Filed Dec. 5, 1934.

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Sixth Circuit:

Your petitioner, Louisville Joint Stock Land Bank, considering itself aggrieved by the order made and entered herein on November 14, 1934, and by the order made and entered herein on December 4, 1934, does hereby appeal as provided by the Bankruptcy Act from such orders, and each of them, and each of the provisions of each of them, to the United States Circuit Court of Appeals for the Sixth Circuit, for the reasons and in the particulars specified and set out in its Assignment of Errors filed herewith as a part hereof, and prays that its appeal and review may be allowed, that a transcript of the record, papers and proceedings under which such orders, and each of them, were made and on which the appeal was taken be duly authenticated and sent to the United States Circuit Court of Appeals for the Sixth Circuit, and that said orders be reversed in the particulars specified in said assignment of errors.

Dated this December 5, 1934.

Louisville Joint Stock Land Bank,
By John E. Tarrant,
Counsel.

William W. Radford, Sr., by counsel, hereby waives issuance and service of citation on any appeal granted pursuant to the foregoing petition for appeal and en-

ters his appearance in the United States Circuit Court of Appeals for the Sixth Circuit on such appeal.

D. A. Sachs, Jr.,
Edwin A. Krauthoff,
Frank Rives,
Counsel for William W. Radford, Sr.

ASSIGNMENT OF ERRORS—Filed Dec. 5, 1934.

Louisville Joint Stock Land Bank (hereinafter called the Bank) files this its assignment of errors herein and says that the Court erred in the following particulars, to-wit:

(1) The Court erred in overruling the objections of the Bank to the maintenance of this proceeding.

(2) The Court erred in adjudging William W. Radford, Sr., a bankrupt.

(3) The Court erred in referring this proceeding to Nat C. Cureton, the Referee in Bankruptcy, to take such proceedings as were authorized by the National Bankruptcy Act as amended by the Act of June 28, 1934.

(4) The Court erred in holding constitutional Section 75 of the National Bankruptcy Act.

(4-a) The Court erred in holding constitutional the amendment of June 28, 1934, to Section 75 of the National Bankruptcy Act, which amendment is the so-called Frazier-Lemke Act.

(4-b) The Court erred in holding the amendment of June 28, 1934, to Section 75 of the National Bankruptcy Act to be a law on the subject of bankruptcies.

(4-c) The Court erred in holding that the amendment of June 28, 1934, to Section 75 of the National Bankruptcy Act did not violate the Due Process Clause of the Fifth Amendment to the Federal Constitution.

(5) The Court erred in entering the order of November 14, 1934.

(6) The Court erred in entering the order of December 4, 1934.

(7) The Court erred in affirming the order entered by the Referee on November 30, 1934.

(7-a) The Court erred in affirming each of the orders entered by the Referee on December 1, 1934.

(8) The Court erred in affirming the order of the Referee entered on November 30, 1934, appointing appraisers and directing them to appraise all the property of the bankrupt at its then fair and reasonable value.

(9) The Court erred in affirming the order of the Referee entered on December 1, 1934, filing and approving the report of appraisers herein.

(10) The Court erred in affirmining the order of the Referee entered on December 1, 1934, fixing the fair and reasonable value of the mortgaged property, but not necessarily its market value, at $4,445.

(11) The Court erred in affirming the order of the Referee entered on December 1, 1934, ordering that possession, subject to the control of the Referee of the District Court of the United States for the Western District of Kentucky, of the mortgaged property should remain in William W. Radford, Sr., subject to a general lien as security for the payment of the value thereof to the Trustee of the creditors, such lien to be subject to and inferior to all prior liens or encumbrances.

(12) The Court erred in affirming the order of the Referee entered on December 1, 1934, staying all proceedings against William W. Radford, Sr., for the enforcement of any lien against the mortgaged property for a period of five years from December 1, 1934.

(13) The Court erred in affirming the order of the Referee entered on December 1, 1934, enjoining and restraining Louisville Joint Stock Land Bank from proceeding in this Court, or in any other Court, for a period of five years from December 1, 1934, to enforce any lien which it has or may have against the mortgaged property.

(14) The Court erred in affirming the order of the Referee entered on December 1, 1934, ordering that during a period of five years from December 1, 1934, William W. Radford, Sr., should retain possession of the mortgaged property under the control of the Court, provided that he pay $325 as a reasonable rental for the first year for such property of which he retained possession and a rental to be subsequently fixed by the Court for subsequent years.

Assignment of Errors

(15) The Court erred in affirming the order of the Referee entered December 1, 1934, fixing as a reasonable rental to be paid by the bankrupt for the mortgaged property the sum of $325 for the first year.

(16) The Court erred in affirming the orders, and each of them, entered by the Referee on November 30, 1934, and December 1, 1934, holding Section 75 of the Bankruptcy Law as amended by the Act of June 28, 1934, constitutional.

(17) The Court erred in failing to reverse each of the orders of the Referee entered on November 30, 1934, and December 1, 1934, on the ground that the amendment of June 28, 1934, to Section 75 of the National Bankruptcy Act was not a law on the subject of bankruptcies and was in violation of the Due Process Clause of the Fifth Amendment to the Constitution of the United States.

(18) The Court erred in allowing William W. Radford, Sr., to file an amended report of appraisers herein.

(19) The Court erred in refusing to allow Louisville Joint Stock Land Bank to pursue its remedies in the Christian Circuit Court and to immediately advertise and sell the mortgaged property in accordance with the judgment heretofore entered by the Christian Circuit Court in a foreclosure suit instituted in the Christian Circuit Court by Louisville Joint Stock Land Bank against William W. Radford, Sr., et al.

John E. Tarrant,
Counsel for Louisville Joint
Stock Land Bank.

ORDER GRANTING APPEAL—Filed Dec. 5, 1934.

On petition of Louisville Joint Stock Land Bank, it is ordered that an appeal be allowed in the petition, and pursuant to the authority of Section 24(b) of the Bankruptcy Act, that the appeal bond is fixed at the sum of Five Hundred Dollars ($500) to be filed with, and approved by, the Clerk of the United States District Court for the Western District of Kentucky.

Chas. H. Moorman,
Judge.

BOND—Filed Dec. 5, 1934.

Know All Men By These Presents that Louisville Joint Stock Land Bank as principal and Fidelity & Deposit Company of Maryland as surety are held and firmly bound unto William W. Radford, Sr., bankrupt, in the sum of Five Hundred Dollars ($500) to be paid to William W. Radford, Sr., bankrupt, to which payment well and truly to be made we bind ourselves, our successors and assigns by these presents.

The condition of this obligation is such that whereas the Louisville Joint Stock Land Bank has prosecuted an appeal to the United States Circuit Court of Appeals for the Sixth Circuit to revise and reverse orders entered on November 14, 1934, and December 1, 1934, in the above styled cause by the District Court of the United States for the Western District of Kentucky.

Now, therefore, if Louisville Joint Stock Land Bank should prosecute said appeal to effect and answer all damages and costs and fails to make good its appeal,

then this obligation shall be void, otherwise it shall be and remain in full force and effect.

Executed this December 5, 1934.

Louisville Joint Stock Land Bank,
By J. C. Engelhard.
Fidelity & Deposit Company of Maryland,
By J. Morton Morris,
Vice-President and Attorney-in-Fact.

Approved this December 6, 1934.
Lilburn Phelps,
Clerk United States District Court,
Western District of Kentucky.

Proceedings in the United States Circuit Court of Appeals for the Sixth Circuit.

STIPULATION—Filed Dec. 14, 1934.

It is stipulated that in the schedules attached to Radford's petition filed February 26, 1934, and omitted from the printed record by agreement, Radford made the following statements:

(1) Radford is indebted to various persons in the sum of One Thousand Four Hundred Fifty-eight Dollars ($1,458), which indebtednesses are secured by liens on certain of Radford's personal property;

(2) Radford is indebted to various persons in the sum of Two Thousand Twenty-three Dollars and Twenty-four Cents ($2,023.24), which debts are unsecured; and

(3) Fixed the value of the real estate mortgaged to the Louisville Joint Stock Land Bank at Four Thousand Five Hundred Dollars ($4,500);

(4) That at the hearing had before the Referee in Bankruptcy in this case in which the Referee determined the rental value of the mortgaged property and considered the report of the appraisers herein, the lienholder was offered an opportunity to introduce evidence as to the rental and the market value of the property mortgaged.

(Signed) John E. Tarrant,
Counsel for Appellant.

(Signed) David A. Sachs, Jr.,
Frank Rives,
Edwn A. Krauthoff,
Counsel for Appellee.

CAUSE ARGUED AND SUBMITTED—Dec. 14, 1934.
(Before: Moorman, Hicks and Simons, JJ.)

This cause is argued by J. E. Tarrant and Wm. Marshall Bullitt for Appellant and by Edwin A. Krauthoff, Harry H. Peterson and William A. Lemke for Appellee and is submitted to the Court.

DECREE—Entered Feb. 11, 1935.

Appeal from the District Court of the United States for the Western District of Kentucky.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Kentucky, and was argued by counsel.

On consideration Whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the said District Court in this cause be and the same is hereby affirmed.

OPINION—Filed Feb. 11, 1935.
No. 6959

UNITED STATES CIRCUIT COURT OF APPEALS
Sixth Circuit

LOUISVILLE JOINT STOCK LAND BANK, *Appellant*, v. WILLIAM W. RADFORD, SR., *Appellee*.	APPEAL from the District Court of the United States for the Western District of Kentucky.

Decided February 11, 1935.

BEFORE MOORMAN, HICKS and SIMONS, Circuit Judges.

SIMONS, Circuit Judge. This appeal, seasonably allowed by us and by the District Court, raises questions in respect to the constitutionality of §75 of the Bankruptcy Act, as amended by the Frazier-Lemke Act of June 28, 1934. The facts are not in dispute, and are sufficiently found in the opinion of the District Judge, 8 Fed. Supp. 489.

The bankrupt is a farmer. In 1922 he borrowed $8,000.00, and in 1924 an additional $1,000.00 from the appellant bank, giving as security mortgages on his 170 acre farm in Christian County, Kentucky, the mortgages containing covenants to pay taxes and to keep the buildings insured. Upon default in the payment of principal, interest and taxes, and through allowance of insurance to lapse, the bank, pursuant to the terms of the mortgages, declared the entire indebtedness thereon due and payable, and on June 5, 1933, filed a foreclosure suit in the Circuit Court of Christian County. Later the bank moved for the appointment of a receiver, but upon being informed by the Conciliation Commissioner of the county that Radford desired to avail himself of the benefits of §75 of the Bankruptcy Act, providing for agricultural compositions and extensions, the court declined to appoint the receiver, and stayed the foreclosure suit. On February 26, 1934, Radford filed in the United States District Court his petition and schedule under §75. On June 30, 1934, the Christian County Circuit Court entered judgment for the bank for the full amount of Rad-

ford's indebtedness, sustained the mortgages as a first lien upon his farm, and ordered the property sold by the Master Commissioner. Before the sale could be had Radford, on August 6, 1934, filed in the District Court an amended petition under the Frazier-Lemke Act, asking to be adjudged a bankrupt, that proceedings against him be stayed for a period of five years, that he be allowed to retain possession of the property during that period, and that he be given an option to purchase the mortgaged property at its appraised value at its termination. The bank intervened and answered, alleging §75 as amended to be unconstitutional, asking dismissal of the bankruptcy proceedings, and that it be allowed to pursue its remedies in accordance with the judgment of the Circuit Court. Radford admitted the allegations of fact in the answer, and the case was submitted upon the pleadings. The court held §75 and the Frazier-Lemke amendment constitutional, adjudged Radford a bankrupt, and referred the cause to the Referee for further proceedings.

Radford then petitioned to have his property appraised, his exemptions set aside, and that he be allowed to retain possession of the property and pay for it under the terms of sub-section (s), of §75, of the Bankruptcy Act. The Referee appointed appraisers, who appraised all of Radford's property, and fixed the fair and reasonable value of the mortgaged property at $4,445.00. The bank in open court offered to pay $9,205.09 in cash for the mortgaged property, but the Referee refused to consider the offer, approved the report of the appraisers, fixed the fair and reasonable value at $4,445.00, and ordered that possession thereof should remain in Radford, subject to a general lien in the trustee as security for the payment of the value of the property. Radford thereupon requested the Trustee to sell him the mortgaged property under the terms and conditions of paragraph (3), of sub-section (s), of §75. The bank refused consent, and filed its written objections thereto. Radford then petitioned the court to stay all proceedings against him for five years, and to allow him to retain possession upon a reasonable annual rental to be fixed by the court. The petition was granted, proceedings were stayed, the bank enjoined from enforcing its mortgage lien for five years, and Radford allowed to retain possession on payment of $325.00 on May 1, 1935, as rental for the first year, with rental for subsequent years to be fixed by the court. Upon a petition to the District Court for review,

the referee's orders were sustained and the bank took its appeal.

Section 75 of the Bankruptcy Act, as originally enacted, was part of the act of March 3, 1933, entitled "Provisions for the Relief of Debtors." It provided that any former claiming to be insolvent or unable to meet his debts might file a petition for composition or an extension. This automatically gave the bankruptcy court the same power and jurisdiction over the farmer and his property as if a voluntary petition for adjudication had been filed, and a decree of adjudication entered. Thereupon all proceedings against the farmer and his farm property, including his home and household effects, were stayed, except for the collection of taxes. The proposed composition or extension could be confirmed by the court only upon written acceptance by a majority of creditors in number and amount, but such composition or extension might not reduce the amount of or impair the lien of a secured creditor, but affect only the time and method of its liquidation.

The Frazier-Lemke Act of June 28, 1934, is an amendment to §75 of the Act of March 3, 1933. Its text is fully set forth in the opinion of the District Judge, and it is therefore not necessary to burden this opinion with it. It is sufficient for our purpose to say that it provides that a farmer failing to obtain the necessary consent to the terms of a composition or extension may by amended petition ask to be adjudged a bankrupt and secure the appointment of appraisers, who shall appraise all of his property at its then fair and reasonable value, not necessarily its market value, and after such appraisal, and after his exemptions under the state law have been set aside to him, then upon an agreement with the lien holders the trustee in bankruptcy must sell back to him all or any part of his property upon the terms specified in the act, but that if any secured creditor refuses to consent to such sale, the court shall stay all proceedings for a period of five years, during which time the farmer may retain possession of all or any part of his property provided he pays a reasonable annual rental therefor. At any time within five years the farmer may obtain full possession and title to his property by paying into court either its original appraised value, or in the case of mortgaged real estate, a reappraised price at the option of the lien holder, and may apply for his discharge in bankruptcy. The provisions of the act apply, however, only to debts existing on June 28, 1934.

Opinion

The legislation in respect to its validity under the Federal Constitution is attacked on two main grounds. It is asserted (1) that §75 as amended is not a law on the subject of bankruptcies and does not deal with any subject over which power is delegated to Congress, and so is in contravention of the Tenth Amendment to the Constitution of the United States; and (2) that it deprives creditors of their property without due process of law, and is therefore in contravention of the Fifth Amendment to the Constitution.

The power to legislate with respect to bankruptcies is conferred upon the Congress by the fourth clause of §8, of Article I, of the Constitution, whereby there is vested in it the power ". . . to establish . . . uniform laws on the subject of bankruptcies throughout the United States." This power is conferred by express grant, and is, so far as the granting clause is concerned, without qualification or limitation. "The power of Congress to establish uniform laws on the subject of bankruptcies throughout the United States is unrestricted and paramount." *International Shoe Co.* v. *Pinkus*, 278 U. S. 261, 265.

On the first ground it is said that a law is not one on the subject of bankruptcies which does not provide for the speedy distribution of an insolvent debtor's assets among his creditors. The contention is that the attacked legislation fails to meet this test in providing that the debtor may at his option retain his property, that his debts may be reduced to the fair and reasonable value of his property, not necessarily the market value, and that he shall have a five year moratorium on the payment of this reduced amount.

Whatever may have been the primary purpose of bankruptcy laws, their historical development and the concept of an earlier day, illustrated by the provisions of English bankruptcy statutes and colonial insolvency laws, it is now established that the subject of bankruptcies includes not only the ratable distribution of the debtor's property, but the discharge of the bankrupt from his obligations. No commentary upon the connotation of the constitutional phrase has been so often quoted as that of Mr. Justice Catron in the case of *In re Klein*, reported in the note to *Nelson* v. *Carland*, 1 How. 265, 277:

> "I hold, it extends to all cases where the law causes to be distributed, the property of the debtor among his creditors; this is its least limit. Its

> greatest, is discharge of the debtor from his contracts. And all intermediate legislation, affecting substance and form, but tending to further the great end of the subject—distribution and discharge—are in the competency and discretion of Congress. With the policy of a law, letting in all classes, others as well as traders; and permitting the bankrupt to come in voluntarily, and be discharged without the consent of his creditors, the courts have no concern; it belongs to the law makers."

To this comment the Supreme Court gave approval in *Hanover National Bank* v. *Moyses*, 186 U. S. 181, at 186.[1] Whether the limits drawn by Mr. Justice Catron mark the ultimate of the modern concept of bankruptcy it is not necessary to decide, for they are sufficient for present purposes. It has been said that distribution of property is the principal object to be attained, and that the discharge of the debtor is merely incidental, *U. S.* v. *Fox*, 95 U. S. 670, but this but illustrates the historical development of bankruptcy legislation. Judge Taft, speaking for this court in *Leidigh Carriage Co.* v. *Stengel*, 95 Fed. 637, 647, enumerates the purposes of bankruptcy acts in the order of their chronological development rather than in the order of their present importance when he declares that the third purpose of a bankruptcy act is "To relieve debtors from the burden of debts which, through business misfortunes and otherwise they have incurred, and which they are unable to pay."

One of the tests applied to State insolvency laws to determine whether they invade the field conveyed to and occupied by the Congress, is to ascertain whether they contain provisions for the discharge of the insolvent debtor from all or part of his debts. If they do the statute is one of bankruptcy. *Pobreslo* v. *Boyd Co.*, 287 U. S. 518; *Johnston* v. *Start*, 287 U. S. 527; *International Shoe Co.* v. *Pinkus*, supra. While this may not be the sole test, it is undoubtedly an important one. See "What is a Bankruptcy Act," by Prof. Max Radin, Vol. 20, American Bar Association Journal, 792.

It is an undoubtedly desirable concomitant of bankruptcy legislation that distribution of the debtor's assets be made as speedily as is consistent with the attainment of the principal objectives of such laws, but that prompt distribution is a necessary prerequisite to the exercise of the granted power we doubt, and no cited

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[1]See Vol. 21, American Bar Ass'n Journal, 49, 50.

case, so holds. Observations on the manifest purpose of specific statutes are not to be interpreted as limitations upon a constitutional power, nor is its exercise to be based upon a standard so elastic as to shift with varying judgments based upon differences of time and circumstance. Even so it is doubtful whether the courts will oppose their judgment as to what constitutes speedy distribution to that of the Congress, except as the legislative standard may be so grossly arbitrary and unreasonable as to offend against the due process clause of the Fifth Amendment, to be hereinafter discussed.

The challenged statute provides for ratable distribution of the bankrupt's assets among his creditors. It provides for his discharge. That it also in response to a manifest public purpose opens the door of opportunity to his ultimate rehabilitation is not of itself destructive of the character of the legislation as within the constitutional grant of power. The limitation of its assailed provisions to a single class does not invalidate it if the classification be reasonable, for the uniformity required by the Constitution is geographical and not personal. *Hanover National Bank* v. *Moyses*, supra.

Compositions have generally been regarded as in some respects outside of bankruptcy proceedings, but nevertheless as reasonably auxiliary thereto. Provisions in bankruptcy statutes for compositions have never been held to invalidate them, though the creditor by reason thereof receives but his pro-rata share of the fair value of the bankrupt's assets, while the debtor retains possession and title to his property. Of course with respect to consenting creditors it is a matter of agreement, *In re Lane*, 125 Fed. 772, 773; *Cumberland Glass Co.* v. *De-Witt*, 237 U. S. 447, 452, but it is coercion as to non-assenting creditors, however it may be rationalized by considering creditors as a class with the will of the majority enforced upon the minority. Nor has the provision in bankruptcy acts permitting trustees to sell mortgaged property free and clear of lien been considered destructive of their validity as acts upon the subject of bankruptcy. "To transfer the lien from the property to the proceeds of its sale is the exercise of a lesser power [than sale], and legislation conferring it is obviously constitutional." *Van Huffel* v. *Harkelrode*, 284 U. S. 225, 228.

It must be remembered that constitutional power is not necessarily confined within those limits within which the Congress has hitherto seen fit to exercise it. The novelty of a provision is no demonstration of its in-

validity. The grant to Congress of the power to establish bankruptcy laws involves the power to impair the obligation of contracts—this the States are by the Fourteenth Amendment forbidden to do. *Hanover National Bank* v. *Moyses,* supra. No case has been cited which limits this power to contracts which are unsecured, and none has been found. On the contrary, it has frequently been held that private contracts may not impose a restriction upon the exercise of a constitutional power. *Louisville & Nashville R. R. Co.* v. *Mottley,* 219 U. S. 467, 485; *Monongahela Bridge Co.* v. *U. S.,* 216 U. S. 177, 193; *Addyston Pipe & Steel Co.* v. *U. S.,* 175 U. S. 211, 229, and preferences valid under state law have been destroyed by the exercise of federal power under the bankruptcy clause. The subject of bankruptcies comprehends every phase of the relations between an insolvent or non-paying or fraudulent debtor and his creditors, extending to his or their relief. *In re Reiman,* Fed. cases No. 11,673 (D. C. N. Y.) 496, affd. Fed. cases No. 11,675 (C. C. N. Y.).

We come then to the contention that the assailed statute offends against the due process clause of the Fifth Amendment. Conceding that the due process clause limits the power or the manner of its exercise under the bankruptcy clause, it nevertheless does not vitiate it. The Constitution is not self-destructive—"the power which it confers on the one hand it does not immediately take away on the other." *Billings* v. *U. S.,* 232 U. S. 261, 282; *McCray* v. *U. S.,* 195 U. S. 27. Perhaps all that is or can be said from the point of view of the appellant is expressed in *Hanover National Bank* v. *Moyses,* supra, "Congress may prescribe any regulations concerning discharge in bankruptcy that are not so grossly unreasonable as to be incompatible with fundamental law," and this is the test that we apply to the contentions upon which the validity of the statute is attacked.

While the congress does not by reason of a national emergency draw unto itself under the bankruptcy clause powers not previously possessed, since "emergency does not create power," yet the existence of an emergency is not to be ignored when validity is to be determined by the reasonableness of the extent to which and the means by which constitutional power is exercised, assuming limitations upon such power exerted by the due process clause. That the assailed legislation was conceived in emergency and addressed to the legitimate end of relieving wide-spread national distress is implicit in the provisions limiting the operation of §7 to debts existing

June 28, 1934, providing that it shall expire in 1938, and by the declaration of policy in substantially contemporaneous amendments to the Bankruptcy Act. That the Frazier-Lemke Act does not itself contain an express declaration of a policy based upon the existence of an emergency is unimportant. A declaration by the legislature as to the existence of an emergency, while entitled to great weight, is not conclusive. *Block* v. *Hirch*, 256 U. S. 135. It must follow that the absence of such formal declaration, if the purpose and policy of the act be otherwise disclosed, is equally inconclusive, and the courts are not required to close their eyes to that which everybody knows exists.

In considering whether the regulations concerning discharge are so grossly unreasonable as to be incompatible with fundamental law, we apply therefore a criterion which itself is not one of unyielding rigidity or narrow conception. "There has been a growing appreciation," said the Supreme Court in *Home Building & Loan Ass'n* v. *Blaisdell*, 290 U. S. 398, 442, "of public needs and of the necessity of finding ground for a rational compromise between individual rights and public welfare." As a leading text-writer has put it, "The concept of the balance of convenience between private rights and public welfare runs throughout the entire scope of due process," Mott, *Due Process of Law* (1926), 597.[3] It follows, if these observations are sound, that the exercise of constitutional power in the public interest is not to be limited by considerations of form rather than of substance, and that the fair intent of the constitutional limitation in the Fifth Amendment no more precludes the Congress from meeting the public need because of a pressing public disaster than does that in the Fourteenth Amendment constrain the states in similar situations so long as the relief afforded has reasonable relation to the legitimate end to which the legislation is directed. *W. B. Worthen Co.* v. *Thomas*, 292 U. S. 426, 433. The public welfare sought to be conserved by the assailed legislation not only transcends the interest of the class to be affected, but is rooted in the traditional policy of the United States to prevent the development of a great class of dependent tenant farmers comparable to the peasantry of European states. This policy was early reflected in the disposition of the public domain, the

[3]See also Corwin, No Doctrine of Due Process of Law Before the Civil War, 24 Har. L. Rev. 366, 460; Hough, Due Process of Law Today, 32 Har. L. Rev. 218.

homestead laws, and the limitations written into the railroad land grants restricting sales in quantity and price and to actual settlers. *Oregon & California R. R. v. U. S.*, 238 U. S. 393. This is not to say that substantial private rights must yield to public policy in the face of constitutional limitation, but is indicated as an aid to determining whether constitutional power has been arbitrarily or unreasonably exercised or the balance between individual interests and the public welfare destroyed.

We pass without consideration the arguments advanced to show that the law is unreasonable or arbitrary with respect to the rights of sureties or unsecured creditors. The appellant is not a surety, nor does the record disclose that its debt is secured otherwise than by mortgage. Neither is it an unsecured creditor. Having offered to pay to the trustee for the mortgaged property an amount equivalent to the total of the mortgage debt and to step out of the bankruptcy proceedings with its mortgages fully discharged, it may become an unsecured creditor if at all only by the failure of its assault upon the statute, and then to the extent of the deficiency that may result after purchase by the bankrupt at appraised value. It is settled that the constitutionality of a statute may be considered only when the justification for some direct injury suffered or threatened presenting a justiciable issue is made to rest upon the enforcement of the act. See *City of Allegan* v. *Consumers' Power Co.*, 71 Fed. (2d) 477, 481 (C. C. A. 6), and authorities there cited. The record presents no issue as between the bankrupt and unsecured cerditors.

Complaint is made, however, that the statute prevents the appellant from enforcing its mortgages for an arbitrary period of five years, and this without relation to the continuance of an emergency; that the rental terms are unreasonable; that no provision is made for taxes and insurance, or for the prevention of waste; that the interest on the mortgage debt is wiped out; that fixing the value of the debtor's property at its fair value, not necessarily its market value, is arbitrary, unreasonable and capricious; that all risk of decline in value is borne by the mortgagee; and, generally, that part of its debt is confiscated for the benefit of the mortgagor.

As to the first it may be sufficient to say that any forecast as to the extent and duration of the emergency must necessarily be uncertain, and we are unable to say until "experience is available to correct uncertain

prophesy" that the judgment of the Congress after hearing and deliberation is wrong. But the appellant gives no challenge to the present existence of the emergency, and manifestly can give none. We are not obliged to speculate as to validity of the statute at another time and under other circumstances. "A law depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change even though valid when passed," *Chastleton Corp.* v. *Sinclair*, 264 U. S. 543, 547, 548, and "It is always open to judicial inquiry whether the exigency still exists upon which the continued operation of the law depends." *Home Bldg. & Loan Ass'n* v. *Blaisdell*, supra.

The principal inquiry, however, that suggests itself in relation to the appellant's grievance, and this in respect to all of the specifications of its complaint, must concern itself with consideration of what it is in fact deprived through the operation of the challenged law. It is true that the appellant will not be able to collect the face value of its mortgages, nor the accrued interest thereon. But this is a loss it has already sustained, not through the operation of the statute, but through the default, insolvency and bankruptcy of its debtor. But for the bankruptcy, it would still have its right to foreclosure, and to bid in the property. It is by the measure of that right that the reasonableness of §75 must be judged. The appraisers have declared and the court has found that the fair value of the mortgaged property is $4,445.00. The fairness of the appraisal is not attacked. That the appellant offered to buy the property from the trustee for an amount equal to the mortgage debt is of course beside the point. Such offer can have no possible bearing upon the fair value of the property. It is this value that forms the base for the price the bankrupt is to pay upon the exercise of his option. True, the mortgagee, upon bidding in the property under foreclosure, has the expectation that by holding the property for a time values may be restored, and it may recoup part or all of its loss. The statute does not take from him this opportunity. It provides for a reappraisal at the end of five years—the option period—upon the mortgagee's request—and the debtor must pay the reappraised price or the original appraised value at the mortgagee's option. If in composition proceedings nonassenting creditors may be compelled, without valid constitutional objection, to accept in discharge of their claims their pro-rata share of the fair

value of the bankrupt's assets—if under the doctrine of *Van Huffel* v. *Harkelrode*, supra, it is "obviously constitutional" to transfer the creditor's lien from the bankrupt's property to the proceeds of its sale—we can see no constitutional bar to the substitution for the value of the appellant's right to foreclose the fair value of the mortgaged property.

But the appellant complains that the provisions for appointment of appraisers is arbitrary and unreasonable, and that the appraisal of the security at its "fair value, not necessarily its market value" somehow offends against due process. It has never been thought that, in the taking of private property for public use under the power of eminent domain, an award made by a jury or Commissioners[3] under the supervision of a court, violates the due process clause or results in taking private property without just compensation. The appraisals are by sub-section (I) of §(s) subject to the right of exceptions, objections and appeal, in accordance with the Act. This obviously means the Bankruptcy Act of which the Frazier-Lemke Act has become a component part. If there is any doubt about this, construction must under familiar principles of statutory interpretation be arrived at to the end that validity rather than invalidity results. An appraisal at "fair value, not necessarily market value," must necessarily mean that market value is the minimum value to be found beyond which other circumstances may be considered to arrive at "fair value." It is inconceivable that an appraisal aiming at fair value will ever be lower than market value, or if so would stand the test of judicial review.

When the appellant complains of its loss of interest during the option period, or the insufficiency of the rental to pay taxes, insurance and repairs, it still speaks in the terms of the mortgage covenants rather than with an evaluation of its remedies for broken contracts, and is tilting at economic distress rather than at the reasonableness of the challenged statute. The foreclosure that is stayed would have brought it no interest, and reasonable rental value has always been the compensatory equivalent for deprivation of the use of property in the eyes of the law. Nor is there substance in the grievance that the property will be seized for taxes and deteriorate through waste. Rentals are to be paid

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[3]Due proces does not require a jury trial if one would be inappropriate. *Ex Parte Wall*, 107 U. S. 265, 289; *Maxwell* v. *Dow*, 176 U. S. 581.

to the bankruptcy trustee, who is still under the supervision of the referee and the court. There is no warrant for the assumption that the trustee may or will be permitted to be less diligent with respect to his duties than with bankrupt estates generally. Moreover, the property is by sub-section (b) placed under the supervision of the Conciliation Commissioner, and the rights of the appellant to invoke the protection of the bankruptcy court as a court of equity are not less under the assailed statute than are those of mortgagees or lessors generally.

Finally the grounds of complaint are in many respects similar to those upon which the constitutionality of §77 of the Bankruptcy Act (providing for corporate reorganizations) has been assailed. While we express no opinion upon the validity of that section, whose constitutionality will presently be passed upon by the Supreme Court, it is important to note that so far as its provisions are similar to those here considered, they have not generally been considered incompatible with validity. *In re Chicago R. I. & P. Ry. Co.*, 72 Fed. (2d) 443 (C. C. A. 7). Compare *In re Landquist, et al.*, 70 Fed. (2d) 929 (C. C. A. 7).[4]

The decree below is affirmed.

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[4]See also XXI American Bar Journal 47; XII, No. 2, New York University Law Quarterly Review (Dec. 2, 1934), 196; Yale Law Journal (Dec., 1931), 197; 32 Mich. Law Journal, 221 (Dec., 1933). Also as to §75, XLVIII, Harvard Law Review, 332 (Dec., 1934), and XXIX Ill. Law Rev. 645 (Jan., 1935).

CLERK'S CERTIFICATE.

UNITED STATES CIRCUIT COURT OF APPEALS
For the Sixth Circuit.

I, J. W. Menzies, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of record and proceedings in the case of Louisville Joint Stock Land Bank v. William W. Radford, Sr., No. 6959, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court at the City of Cincinnati, Ohio, this 11th day of February, A. D. 1935.

J. W. Menzies,
Clerk of the United States Circuit
Court of Appeals for the Sixth Circuit.

(Seal)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 4, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted, and the case is assigned for argument on Monday, April 1st, next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.